# TEXAS REGISTER

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School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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# IN THIS ISSUE

# Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
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**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

# THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

## Requests for Opinions

**RQ-0980-GA**

**Requestor:**

The Honorable Pete P. Gallego

Chair, Committee on Criminal Jurisprudence

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether §2157.0611, Government Code, is still in effect and, if so, whether it is applicable to an independent school district (RQ-0980-GA)

**Briefs requested by July 29, 2011**

**RQ-0981-GA**

**Requestor:**

The Honorable Robert Henneke

Kerr County Attorney

700 Main Street, Suite BA103

Kerrville, Texas 78028

Re: Use of the county jail commissary fund to train inmates to perform certain activities (RQ-0981-GA)

**Briefs requested by August 1, 2011**

**RQ-0982-GA**

**Requestor:**

Dr. Raymund Paredes

Commissioner of Higher Education

Texas Higher Education Coordinating Board

Post Office Box 12788

Austin, Texas 78711-2788

Re: Authority of the Higher Education Coordinating Board to adopt a complaint procedure that complies with the program integrity regulations established by the federal Department of Education (RQ-0982-GA)

**Briefs requested by August 2, 2011**

*For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.*

TRD-201102525
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: July 5, 2011

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# EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

## TITLE 4. AGRICULTURE

## PART 1. TEXAS DEPARTMENT OF AGRICULTURE

### CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS
### SUBCHAPTER R. FORMOSAN TERMITE QUARANTINE

**4 TAC §19.181**

The Texas Department of Agriculture (the department) adopts on an emergency basis an amendment to §19.181, concerning a quarantine for the Formosan subterranean termite, *Coptotermes formosanus* Shiraki. The amendment adds Hays County to the list of subterranean termite-infested counties in Texas. Texas A&M University recently informed the department that a subterranean termite infestation was detected in Hays County. The addition of Hays County increases the list of the Texas counties quarantined for the subterranean termites to 31. The amended section is adopted on an emergency basis to slow the spread of this termite into termite-free areas of Texas.

The department believes that it is necessary to take this immediate action to reduce the spread of the Formosan subterranean termite into termite-free areas of Texas, and that adoption of this amended section on an emergency basis is both necessary and appropriate. There is an imminent peril to homeowners, pecan trees in backyards, and possibly pecan orchards and other commercial fruit trees. The amended section does not alter the natural spread of this termite but requires termite-free movement of the quarantined articles, which may include fumigation of railroad ties, the primary pathway of the termite spread. Amended §19.181 adds Hays County to the list of the Formosan subterranean termite-infested counties in Texas. The department may propose adoption of this rule amendment on a permanent basis in a separate submission.

The amendment to §19.181 is adopted on an emergency basis under the Texas Agriculture Code (the Code) §71.002, which provides the department with the authority to quarantine an area if it determines that a dangerous insect pest or plant disease not widely distributed in this state exists within an area of the state; the Code, §71.003, which provides the department with the authority to declare an area pest-free and quarantine surrounding areas if it determines that an insect pest or plant disease of general distribution in this state does not exist in an area; and the Code, §71.007, which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for a specific treatment of quarantined articles; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

*§19.181. Quarantined Areas.*

The quarantined areas are:

(1) - (9) (No change.)

(10) Texas counties: Anderson, Angelina, Aransas, Bexar, Brazoria, Brazos, Cameron, Chambers, Collin, Comal, Colorado, Dallas, Denton, Fort Bend, Galveston, Gregg, Harris, Hays, Henderson, Hidalgo, Jefferson, Johnson, Liberty, Nacogdoches, Nueces, Orange, Polk, Rockwall, Smith, Tarrant, and Travis.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 27, 2011.

TRD-201102421
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: June 27, 2011
Expiration date: October 24, 2011
For further information, please call: (512) 463-4075

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# PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

**Symbols in proposed rule text.** Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

## TITLE 1. ADMINISTRATION

## PART 3. OFFICE OF THE ATTORNEY GENERAL

## CHAPTER 55. CHILD SUPPORT ENFORCEMENT

## SUBCHAPTER I. STATE DIRECTORY OF NEW HIRES

### 1 TAC §55.302, §55.303

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §55.302 and §55.303 to clarify the definition of "date of hire" and to update changes to employer new hire reporting requirements. The proposed amendments are made pursuant to federal changes to section 453a of the Social Security Act, which outlines a new mandatory data requirement for employers when reporting new hire information to the State Directory of New Hires.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for state or local government.

Ms. Key has also determined that for each year of the first five years the amended sections as proposed are in effect, the public benefit as a result of the amended sections will be compliance with state and federal statutes.

Ms. Key has also determined that for the first five years the amended sections as proposed are in effect, there will be no significant fiscal implications for small businesses or individuals. In addition, there will be no local employment impact as a result of the amended sections as proposed.

Comments on the proposed amendments should be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments are authorized under Texas Family Code §234.104, which provides the Office of the Attorney General with the authority to establish by rule procedures for reporting employee information.

The Texas Family Code, Chapters 231 and 234 are affected by the amended sections.

*§55.302. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) - (2) (No change.)

(3) Date of hire--The date of hire for a new employee is considered to be the first day services are performed for pay [~~wages~~] by an individual.

(4) - (9) (No change.)

*§55.303. Employer New Hire Reporting Requirements.*

(a) Except as provided in §§55.304 - 55.306 of this title (relating to Common Paymaster, Multi-State Employers, and Federal Government Employers), each Texas employer shall furnish to the State Directory of New Hires in the state in which a newly hired employee works a report of all new hires that contains the following seven [~~six~~] required data elements [~~found on the employee's W-4 form~~]:

(1) - (3) (No change.)

(4) the employee's date of hire,

(5) [~~(4)~~] the employer name,

(6) [~~(5)~~] the employer address, and

(7) [~~(6)~~] the Federal Employer Identification Number (FEIN).

(b) Employers, at their option may also provide the following additional information in the report:

[~~(1) the employee's date of hire,~~]

(1) [~~(2)~~] the employee's date of birth, and

(2) [~~(3)~~] the employee's expected salary or wages,

(3) [~~(4)~~] Employer payroll addresses for mailing of notice to withhold child support

(c) All employers shall report new hire information on a Form W-4 or an equivalent form by first class mail, telephonically, or electronically as determined by the employer and in a format acceptable to the Title IV-D agency. The Title IV-D agency reserves the right to decline any type of form that it deems as illegible or inappropriate for new hire report processing and requests employers who elect to submit new hire reports via hardcopy to adopt the Employer New Hire Reporting Form supplied by the IV-D agency.

(1) Formats available to employers include:

(A) (No change.)

(B) Employer New Hire Reporting Form supplied by the IV-D agency:

Figure: 1 TAC §55.303(c)(1)(B)

[~~Figure: 1 TAC §55.303(c)(1)(B)~~]

(C) - (E) (No change.)

(2) (No change.)

(d) - (g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102501
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 14, 2011
*For information regarding this publication, contact Agency Liaison, Zindia Thomas, at (512) 936-9901.*

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## SUBCHAPTER J. VOLUNTARY PATERNITY ACKNOWLEDGMENT PROCESS

### 1 TAC §§55.401 - 55.403, 55.407, 55.409

The Office of the Attorney General, Child Support Division proposes amendments to 1 TAC §§55.401 - 55.403 and 55.407 and new §55.409, concerning the voluntary paternity acknowledgment process. The proposed amendments and new rule reflect legislative changes to Texas Family Code, Chapter 160, Subchapter D. The amended sections and new rule clarify and outline procedures for the rescission of the Acknowledgment of Paternity.

Alicia G. Key, Deputy Attorney General for the Child Support Division, has determined that for the first five years the sections as proposed are in effect, there will be no significant fiscal implications on state or local government as a result of enforcing or implementing the sections.

Ms. Key has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of the new and amended sections will be a clarification of the voluntary paternity acknowledgment process. There will be no significant fiscal implications for small businesses, micro-businesses, or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the new sections.

Comments on the proposed amendments and the new rule should be submitted to Kathy Shafer, Deputy Director, Legal Counsel Division, Office of the Attorney General (physical address), 5500 East Oltorf St., Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed amendments and new rule are authorized by Texas Family Code §160.314.

The Texas Family Code, Chapter 160, Subchapter D, Voluntary Acknowledgment of Paternity, are affected by the amended and new sections.

*§55.401. Scope.*

Fathers and mothers who wish to voluntarily establish paternity for their child or rescind a previously executed Acknowledgment of Paternity or Denial of Paternity may do so through any local child support office of the Office of the Attorney General, Child Support Division; the Texas Department of State Health Services, Vital Statistics Unit; a local birthing hospital or birthing center; or any entity certified by the Office of the Attorney General to provide such services. The Acknowledgment of Paternity must be executed according to the rules contained herein and under the Texas Family Code, Chapter 160, Subchapter D, Voluntary Acknowledgment of Paternity. Entities that are required by law to provide paternity establishment services and entities that voluntarily elect to provide paternity establishment services must abide by the rules of this subchapter.

*§55.402. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (2) (No change.)

(3) Rescission of Acknowledgment of Paternity form--A statement executed by a signatory rescinding an Acknowledgment of Paternity or Denial of Paternity, on a form prescribed by the Texas Department of State Health Services, Vital Statistics Unit.

(4) [~~(3)~~] Certified entity--An agency, organization, or individual that is certified by the Office of the Attorney General to perform voluntary paternity establishment services. The certified entity must comply with all rules established for such certification.

(5) [~~(4)~~] Presumed father--A man who is legally assumed to be the father of a child because he meets the criteria found under Texas Family Code §160.204.

(6) [~~(5)~~] Parent Survey on the Acknowledgment of Paternity--A form promulgated by the Office of the Attorney General to assist parents and the certified entity in the completion of the Acknowledgment of Paternity.

*§55.403. Forms.*

The certified entities offering voluntary paternity establishment services may obtain the prescribed Acknowledgment of Paternity and Denial of Paternity forms and the Rescission of the Acknowledgment of Paternity forms by contacting the Texas Department of State Health Services, Vital Statistics Unit.

*§55.407. Certification.*

All birthing hospitals, all birthing centers, the Texas Department of State Health Services, Vital Statistics Unit, a registered nurse working in a partnership program funded through the nurse-family partnership competitive grant program, and each certified entity must have staff who:

(1) - (3) (No change.)

(4) use only the Acknowledgment of Paternity and Denial of Paternity forms and Rescission of Acknowledgment of Paternity forms promulgated by the Texas Department of State Health Services, Vital Statistics Unit.

(5) - (6) (No change.)

*§55.409. Rescinding Acknowledgment or Denial.*

Any signatory to an Acknowledgment of Paternity or Denial of Paternity may rescind an acknowledgment or denial through a certified entity providing such services. The rescinding party must:

(1) Complete a Rescission of Acknowledgment of Paternity form.

(2) Mail copies of the Rescission of Acknowledgment of Paternity form by certified or registered mail to all people who signed the original Acknowledgment of Paternity or Denial of Paternity and the Attorney General's Office, if required.

(3) Submit to Texas Department of State Health Services, Vital Statistics Unit:

(A) the original Rescission of Acknowledgment of Paternity form; and

(B) the original proof of mailing of the copies.

(4) Submissions to the Texas Department of State Health Services, Vital Statistics Unit must be made by the date a proceeding related to the child is initiated or the 60th day after the effective date of the acknowledgment, whichever comes earlier.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102508

Jay Dyer

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: August 14, 2011

*For information regarding this publication, contact Agency Liaison, Zindia Thomas, at (512) 936-9901.*

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# PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 355. REIMBURSEMENT RATES

## SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (ICF/MR)

### 1 TAC §355.457

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.457, concerning Cost Finding Methodology.

Background and Justification

This rule establishes the cost finding methodology for the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) program. Among other things, the rule describes limitations for reporting wage rates, benefits and hours for related-party direct service workers, including direct care staff, first line supervisors, licensed professionals, and qualified mental retardation professionals. These limitations were developed at a time when all ICF/MR providers were subject to fiscal accountability. Fiscal accountability rules required all ICF/MR providers to meet certain spending requirements for a broad range of direct care staff types and so the related-party cost reporting rules were broadly drafted to apply to all direct service staff.

Rule amendments adopted in the June 11, 2010, issue of the *Texas Register* limited fiscal accountability to services delivered on or before August 31, 2009 (35 TexReg 5026) and added the ICF/MR program to the Attendant Compensation Rate Enhancement effective for services delivered on or after September 1, 2010 (35 TexReg 5015). The Attendant Compensation Rate Enhancement applies only to staff defined as attendants in §355.112 (relating to Attendant Compensation Rate Enhancement).

HHSC, under its authority and responsibility to administer and implement rates, is proposing to apply related-party limits to attendants only. All other related-party staff types will remain subject to related-party cost reporting rules described in §355.102 (relating to General Principles of Allowable and Unallowable Costs).

The rule also currently limits the sum of direct care hours reported on ICF/MR cost reports for any individual owner or related party to 2,600 per year. It has always been the intent of HHSC to limit the hours that an owner or related party could report as direct care service hours on the cost report to 2,600 hours per cost reporting year (50 hours times 52 weeks). Because HHSC did not have the technology to link related cost reports across multiple programs, each individual related party was allowed to report up to 2,600 hours of direct care work for each program in which they worked. For example, a related party working in the ICF/MR and Home and Community-based Services (HCS) programs could report up to 5,200 hours per year as a direct care employee (2,600 hours in the ICF/MR program and 2,600 hours in the HCS program).

HHSC is in the process of implementing a web-based cost reporting system that will allow it to link related cost reports across multiple programs. As a result of this reporting system change and the move away from fiscal accountability (spending requirements for all direct care staff) to the rate enhancement system (spending requirements only on attendants), HHSC is proposing to change this rule to clearly limit the total number of attendant hours reported across all cost reports for any individual owner or related party to 2,600 hours. The practical result of this change will be that related parties will not be able to claim attendant hours worked for more than a total of 2,600 hours per cost report year and can report any additional hours worked as administrative hours.

Finally, HHSC is proposing various changes to clarify existing rule language.

Section-by-Section Summary

The proposed amendments to §355.457 are as follows:

Revise subsection (b)(1) to define attendant service costs instead of direct service costs.

Revise subsection (b)(2)(A) to delete the term "direct services."

Revise subsection (b)(2)(B) to replace references to direct services with references to attendant services.

Revise subsection (b)(2)(C)(i) to replace references to direct services with references to attendant services and to eliminate references to first level supervision.

Revise subsection (b)(2)(C)(ii) to replace references to direct services with references to attendant services.

Revise subsection (b)(2)(C)(iii) to replace references to direct staff with references to attendants and to delete a reference to direct care trainer supervisors.

Revise subsection (b)(2)(C)(iii)(I), (II) and (V) to replace references to direct service staff-types with references to attendant service staff-types.

Delete subsection (b)(2)(C)(iv) and renumber subsequent clauses.

Revise renumbered subsection (b)(2)(C)(iv) to replace references to direct service type with references to attendant-service staff-type.

Revise renumbered subsection (b)(2)(C)(v) to replace references to direct-care hours with references to attendant-care hours and to replace a reference to ICF/MR cost reports with a reference to any cost report.

Revise renumbered subsection (b)(2)(C)(vi) to renumber internal references.

Revise various subsections, paragraphs, and subparagraphs to delete references to HHSC's designee.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefits are that provider and HHSC work pertaining to applying and enforcing special limits on related-party wages, benefits, and hours will be reduced because these special limits will be applied to a smaller pool of job classifications. As well, cost reports will not reflect unreasonable amounts of attendant hours worked for individual related parties working across multiple programs, which will enhance the integrity of the Attendant Compensation Rate Enhancement for the ICF/MR program.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax at (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

*§355.457. Cost Finding Methodology.*

(a) General principles. The Texas Health and Human Services Commission (HHSC) applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(b) Additional requirements. In addition to the requirements of §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs), the following apply to costs for the intermediate care facilities for persons with mental retardation (ICF/MR) program.

(1) Attendant service costs. Attendant service costs are defined in §355.112 of this title (relating to Attendant Compensation Rate Enhancement). [~~Direct-service costs. Direct service costs include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care staff, Qualified Mental Retardation Professional (QMRPs), as defined in 42 Code of Federal Regulations, Part 483, Subpart I, §483.430, registered nurses, and licensed vocational nurses. Direct service costs include: costs related to wages, benefits, payroll taxes, and contracts for direct services. Accrued leave (sick or annual) can only be considered a direct service cost if the employee has a right to the cash value of that leave upon termination.~~]

(2) Provider responsibilities. The provider is responsible for submission of the cost report to HHSC, and payment of amounts owed in accordance with subsection (c) of this section for services delivered on or before August 31, 2009, and payment of amounts owed in accordance with §355.112 of this title [~~(relating to Attendant Compensation Rate Enhancement)~~] for services delivered on or after September 1, 2010, regardless of whether the provider contracts with another entity for the management or operation of the ICF/MR.

(A) If the provider contracts with another entity for the management or operation of the ICF/MR, the provider must report the specific [~~direct services~~] costs of that entity as required in the cost report instructions and not the amount for which the provider is contracting for the entity's services.

(B) For staff whose duties include work other than the provision of attendant [direct] services for the provider, time spent providing attendant [direct] services and associated expenses may be reported as attendant [direct] service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(C) Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title.

*(i)* Time sheet requirement. Owners and related parties [related-parties] who provide multiple types of attendant [direct] service (e.g., direct care workers, direct care trainers, and job coaches) or[,] both attendant services [direct care] and non-attendant [indirect] services [and/or both direct hands-on support and first-level supervision of direct care workers] must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title.

*(ii)* Calculation of allowable hourly wage rate and benefits. Allowable hourly wage rate and benefits for attendant [direct] service work must be the lesser of the actual hourly wage rate paid and benefits paid or the hourly wage rate and benefits for a comparable attendant [direct care staff person] assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.456(d) of this title (relating to Reimbursement Methodology) prior to any adjustments made in accordance with §355.101 of this title (relating to Introduction) and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

*(iii)* Calculation of allowable hours for attendants [direct staff except for direct-care trainer supervisors]. Allowable hours per unit of service for an attendant [a direct service staff-type] when the reported hours include [for the staff-type includes] related-party hours, are determined as follows:

*(I)* Step 1. Determine the hours per unit of service for a comparable attendant-service [direct service] staff-type assumed in the fully-funded model as defined in clause (ii) of this subparagraph, adjusted for the provider's average Level of Need (LON) during the reporting period.

*(II)* Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable attendant-service [direct service] staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider's average LON during the reporting period.

*(III)* Step 3. Determine the greater of Step 1 and Step 2.

*(IV)* Step 4. Determine the actual hours worked by the staff-type per unit of service.

*(V)* Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the attendant-service [direct service] staff-type.

~~*(iv)* Calculation of allowable hours for direct-care trainer supervisors. Allowable direct-care trainer supervisor hours when the reported direct-care trainer supervisor hours include related-party hours, are determined as follows:~~

~~*(I)* Step 1. Determine the ratio of direct-care trainer supervisor hours to direct-care trainer hours assumed in the fully-funded model as defined in clause (ii) of this subparagraph.~~

~~*(II)* Step 2. Determine the ratio of direct-care trainer supervisor hours to direct-care trainer hours encompassed by the 90th percentile in the array of ratios of direct-care trainer supervisor hours to direct-care trainer hours for those contracted providers not reporting any related-party direct-care trainer supervisor hours.~~

~~*(III)* Step 3. Determine the greater of Step 1 and Step 2.~~

~~*(IV)* Step 4. Determine the actual ratio of direct-care trainer supervisor hours to direct-care trainer hours.~~

~~*(V)* Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable ratio of direct-care trainer supervisor hours to allowable direct-care trainer hours reported. To determine the actual allowable direct-care trainer supervisor hours, multiply the allowable direct-care trainer hours by the allowable ratio of direct-care trainer supervisor hours to allowable direct-care trainer hours.~~

*(iv)* [~~(v)~~] Exception to related party [related-party] adjustment. If at least 40 percent of total labor hours in a specific related party's attendant-service staff-type [related-party's direct service type] were provided by non-related-parties, the related-party's hourly wage rate may be the higher of the model assumption for that attendant-service staff-type [direct service type] described in clause (ii) of this subparagraph or the non-related party average for that attendant-service staff-type [direct service type], so long as the non-related party average does not exceed the related-party's actual hourly wage.

*(v)* [~~(vi)~~] Maximum attendant-care [direct-care] hours. During any single fiscal year, the sum of all attendant-care [direct care] hours reported on any [ICF/MR] cost report(s) for any individual owner or related party cannot exceed 2,600.

*(vi)* [~~(vii)~~] Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in clauses (ii) - (v) [~~(vi)~~] of this subparagraph are to be reported as administrative hours, hourly wages and benefits.

(3) Placement of vendor hold for change of ownership and contract termination. For services delivered on or before August 31, 2009, the Department of Aging and Disability Services (DADS) will place a vendor hold on a prior owner at a change of ownership which results in the execution of a new provider agreement or a contract termination. The prior owner must submit a cost report to HHSC for the current reporting period. Upon receipt of an acceptable cost report and resolution of any outstanding balances, the vendor hold will be released. For services delivered on or after September 1, 2010, placement of vendor hold for change of ownership and contract termination will be governed by the information in §355.112 of this title.

(4) Ownership change or contract termination and failure to submit a cost report. For services delivered on or before August 31, 2009, providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in subsection (c)(1)(A) - (C) of this section. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent. For services delivered on or after September 1, 2010, recoupment of funds related to failure to submit a

cost report after an ownership change from one legal entity to a different legal entity or a contract termination will be governed by the information in §355.112 of this title.

(5) Failure to submit a cost report. For services delivered on or before August 31, 2009, providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in subsection (c)(1)(D) of this section. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in subsection (c)(1)(A) - (C) of this section. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent. For services delivered on or after September 1, 2010, recoupment of funds related to failure to submit a cost report within 60 days of the placement of a vendor hold due to failure to submit the cost report will be governed by the information in §355.112 of this title.

(6) Other applicable rules. For cost reports pertaining to providers' fiscal years ending in calendar year 2004 and subsequent years the following applies:

(A) Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(B) Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title.

(C) Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(7) Field audit and desk review [~~Audit and Desk Review~~]. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports), and providers will be notified of the results of a desk review or a field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(8) Reviews of exclusions or adjustments. An ICF/MR provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Fiscal accountability. For services delivered on or before August 31, 2009, HHSC will require providers to report all direct costs incurred in their annual fiscal year. HHSC will compare the reported direct service costs to the direct service cost component of the modeled rates.

(1) Fiscal accountability calculation. The total direct service revenue of the modeled rates is the direct service portion of the rate multiplied by the number of allowable units paid for services provided during the reporting period.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 85% of the direct service revenues will be required to pay to HHSC [~~or its designee~~] the difference between the direct service costs and 95% of the direct service revenues.

(C) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to HHSC [~~or its designee~~] 75% of the difference between the direct service costs and 90% of the direct service revenues.

(D) Providers who do not submit an acceptable cost report as described in subsection (b)(4) or (5) of this section will be assumed to have direct service costs equal to 65% of the direct services revenues and HHSC [~~or its designee~~] will recoup the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of subsection (b)(4) or (5) of this section.

(2) Notification of recoupment. Providers will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC [~~or its designee~~]. If a subsequent review by HHSC or audit results in adjustments to the Cost Report as described in subsection (b)(7) of this section that changes the amount to be repaid to HHSC [~~or its designee~~], the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. HHSC [~~or its designee~~] will recoup any amount owed from a provider's vendor payment(s) following the date of the notification letter.

(3) Repayment. Repayment will be collected from the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(4) Repayment when ownership change or contract termination occurs. For providers undergoing an ownership change or contract termination, HHSC [~~or its designee~~] will recoup any amount owed from the provider's vendor payments that are being held. In cases where funds identified for recoupment cannot be repaid from the held vendor payments, the responsible entity from paragraph (3) of this subsection will be jointly and severally liable for any additional payment due to HHSC [~~or its designee~~]. Failure to repay the amount due or submit an acceptable payment plan within 60 days of notification will result in the recoupment of the owed funds from other Medicaid contracts controlled by the responsible entity, placement of a vendor hold on all Medicaid contracts controlled by the responsible entity and will bar the responsible entity from receiving any new contracts with HHSC [~~or its designee~~] until repayment is made in full. The responsible entity for these contracts will be notified as described in paragraph (2) of this subsection prior to the recoupment of owed funds, placement of vendor hold and barring of new contracts.

(5) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

*(i)* Aggregation--For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one ICF/MR component code, the process of determining compliance with the spending requirements detailed in paragraph (1) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (1) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code

to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

*(ii)* Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

*(iii)* Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

*(iv)* Control--greater than 50% ownership by the entity.

(B) Component Codes Included in Aggregation. If an entity controlling more than one ICF/MR component code or commonly owned corporations requests aggregation, compliance with the spending requirements will be evaluated in the aggregate for all ICF/MR component codes that the entity or commonly owned corporations controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last ICF/MR contract.

(C) Aggregation Request. To exercise the aggregation option, the entity or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(D) Frequency of Aggregation Requests. The entity or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(E) Ownership Changes and Contract Terminations. ICF/MR contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (1) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102494
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 424-6900

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## SUBCHAPTER F. REIMBURSEMENT METHODOLOGY FOR PROGRAMS SERVING PERSONS WITH MENTAL ILLNESS AND MENTAL RETARDATION

**1 TAC §355.722**

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.722, concerning Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers.

Background and Justification

This rule establishes the cost finding methodology for the HCS and TxHmL programs. Among other things, the rule describes limitations for reporting wage rates, benefits and hours for related-party direct service workers, including direct care workers, first level supervisors of direct care workers, registered nurses, licensed vocational nurses and other personnel who provide activities of daily living training and clinical program services. These limitations were developed at a time when all HCS providers were subject to fiscal accountability. Fiscal accountability rules required all HCS providers to meet certain spending requirements for a broad range of direct care staff types and so the related-party cost reporting rules were broadly drafted to apply to all direct service staff.

Rule amendments adopted in the June 11, 2010, issue of the *Texas Register* limited fiscal accountability to services delivered on or before August 31, 2009 (35 TexReg 5026) and added the HCS and TxHmL programs to the Attendant Compensation Rate Enhancement effective for services delivered on or after September 1, 2010 (35 TexReg 5015). The Attendant Compensation Rate Enhancement applies only to staff defined as attendants in §355.112 (relating to Attendant Compensation Rate Enhancement).

HHSC, under its authority and responsibility to administer and implement rates, is proposing to apply related-party limits to attendants only. All other related-party staff types will remain subject to related-party cost reporting rules described in §355.102 (relating to General Principles of Allowable and Unallowable Costs).

The rule also currently limits the sum of direct care hours reported on HCS/TxHmL cost reports for any individual owner or related party to 2,600 per year. It has always been the intent of HHSC to limit the hours that an owner or related party could report as direct care service hours on the cost report to 2,600 hours per cost reporting year (50 hours times 52 weeks). Because HHSC did not have the technology to link related cost reports across multiple programs, each individual related party was allowed to report up to 2,600 hours of direct care work for each program in which they worked. For example, a related party working in the HCS and Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) programs could report up to 5,200 hours per year as a direct care employee (2,600 hours in the HCS program and 2,600 hours in the ICF/MR program).

HHSC is in the process of implementing a new web-based cost reporting system that will allow it to link related cost reports across multiple programs. As a result of this reporting system change and the move away from fiscal accountability (spending requirements for all direct care staff) to the rate enhancement system (spending requirements only on attendants), HHSC is proposing to change this rule to clearly limit the total number of attendant hours reported across all cost reports for any individual owner or related party to 2,600 hours. The practical result of this change will be that related parties will not be able to claim attendant hours worked for more than a total of 2,600 hours per cost report year and can report any additional hours worked as administrative hours.

Finally, HHSC is proposing various changes to clarify existing rule language.

Section-by-Section Summary

The proposed amendments to §355.722 are as follows:

Revise subsection (a) to delete a reference to HHSC's designee.

Revise subsection (a)(1) to define attendant service costs instead of direct service costs.

Revise subsection (a)(2) to replace references to direct services with references to attendant services.

Revise subsection (a)(3) to replace references to direct services with references to attendant services.

Revise subsection (h)(1) to replace references to direct services with references to attendant services.

Revise subsection (h)(2) to replace references to direct services with references to attendant services.

Revise subsection (h)(3) to replace references to direct staff with references to attendants and to delete a reference to direct care trainer supervisors and direct care worker supervisors.

Revise subsection (h)(3)(A), (B) and (E) to replace references to direct service staff-types with references to attendant service staff-types.

Delete paragraphs (4) and (5) in subsection (h) and renumber subsequent paragraphs.

Revise renumbered subsection (h)(4) to replace references to direct service type with references to attendant-service staff-type.

Revise renumbered subsection (h)(5) to replace references to direct-care hours with references to attendant-care hours and to replace a reference to HCS and TxHmL cost reports(s) with a reference to any cost report(s).

Revise renumbered subsection (h)(6) to renumber internal references.

Revise subsection (j)(5) to delete references to HHSC's designee.

Fiscal Note

Gordon E. Taylor, Chief Financial Officer for the Department of Aging and Disability Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. There are no fiscal implications for local governments as a result of enforcing or administering the section.

Small Business and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there is no adverse economic effect on small businesses or micro-businesses as a result of enforcing or administering the amendment. The implementation of the proposed rule amendment does not require any changes in practice or any additional cost to the contracted provider.

HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect local employment.

Public Benefit

Carolyn Pratt has also determined that, for each of the first five years the amendment is in effect, the expected public benefits are that provider and HHSC work pertaining to applying and enforcing special limits on related-party wages, benefits, and hours will be reduced because these special limits will be applied to a smaller pool of job classifications. As well, cost reports will not reflect unreasonable amounts of attendant hours worked for individual related parties working across multiple programs which will enhance the integrity of the Attendant Compensation Rate Enhancement for the HCS and TxHmL programs.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Public Comment

Questions about the content of this proposal may be directed to Pam McDonald in the HHSC Rate Analysis Department by telephone at (512) 491-1373. Written comments on the proposal may be submitted to Ms. McDonald by fax at (512) 491-1998; by e-mail to pam.mcdonald@hhsc.state.tx.us; or by mail to HHSC Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Human Resources Code, Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

*§355.722. Reporting Costs by Home and Community-based Services (HCS) and Texas Home Living (TxHmL) Providers.*

(a) Submittal of cost reports. On an annual basis, all providers must submit cost reports as directed by the Texas Health and Human Services Commission (HHSC) [~~HHSC or its designee and~~] in accordance with this subchapter. HHSC [~~The Texas Health and Human Services Commission (HHSC)~~] applies the general principles of cost determination as specified in §355.101 of this title (relating to Introduction).

(1) Attendant service costs. Attendant service costs are defined in §355.112 of this title (relating to Attendant Compensation Rate Enhancement). [~~Direct service costs. Direct service costs are defined to include costs associated with personnel who provide direct hands-on support for consumers and include personnel such as direct care workers, first-level supervisors of direct care workers, registered nurses, licensed vocational nurses, and other personnel who provide activities of daily living training and clinical program services. Direct service costs include: costs related to wages, benefits, payroll taxes, and contracts for direct services. Accrued leave (sick or vacation) can only be considered a direct service cost if the employee has a right to a cash value of that leave upon termination.~~]

(2) Staff who provide both attendant [~~direct~~] and non-attendant [~~other than direct~~] services. For staff whose duties include work other than the provision of attendant [~~direct~~] services for the provider, time spent providing attendant [~~direct~~] services and associated expenses may be reported as attendant [~~direct~~] service costs if properly documented in accordance with §355.105 of this title (relating to General Reporting and Documentation Requirements, Methods, and Procedures).

(3) Providers must report the following costs:

(A) Staff wages related to the delivery of attendant [~~direct~~] services [~~including residential assistance, day habilitation services, and the direct supervision of the delivery of these services~~].

(B) These costs may be either the provider's actual expense or contracted expenditures.

(b) Reviews of exclusions or adjustments. A provider who disagrees with HHSC's exclusion or adjustment of items in cost reports may request an informal review and, when appropriate, an administrative hearing as specified in §355.110 of this title (relating to Informal Reviews and Formal Appeals).

(c) Field audit and desk review. Desk reviews or field audits are performed on cost reports for all contracted providers. The frequency and nature of the field audits are determined by HHSC to ensure the fiscal integrity of the program. Desk reviews and field audits will be conducted in accordance with §355.106 of this title (relating to Basic Objectives and Criteria for Audit and Desk Review of Cost Reports).

(d) Notification of exclusions and adjustments. HHSC will notify a provider of the results of a desk review or field audit in accordance with §355.107 of this title (relating to Notification of Exclusions and Adjustments).

(e) Cost reporting guidelines. Providers must follow the cost-reporting guidelines as specified in §355.105 of this title.

(f) Allowable and unallowable costs. Providers must follow the guidelines in determining whether a cost is allowable or unallowable as specified in §355.102 and §355.103 of this title (relating to General Principles of Allowable and Unallowable Costs, and Specifications for Allowable and Unallowable Costs).

(g) Revenues. Revenues must be reported on the cost report in accordance with §355.104 of this title (relating to Revenues).

(h) Related parties. Allowable compensation for owners and related parties and definitions of owners and related parties are specified in §355.102(i) and §355.103(b)(2) of this title.

(1) Time sheet requirement. Owners and related parties who provide multiple types of attendant [~~direct~~] service (e.g., direct care workers, direct care trainers, and job coachers) or[~~,~~] both attendant services [~~direct care~~] and non-attendant [~~indirect~~] services [~~and/or both direct hands-on support and first-level supervision of direct care workers~~] must maintain daily time sheets that record the time spent on activities in each area. The provider must maintain documentation relating to the compensation, bonuses, and benefits of each owner or related party in accordance with §355.105(b)(2)(B)(xi) of this title.

(2) Calculation of allowable hourly wage rate and benefits. Allowable hourly wage rate and benefits for attendant [~~direct~~] service work must be the lesser of the actual hourly wage rate paid and benefits paid or the hourly wage rate and benefits for a comparable attendant [~~direct care staff person~~] assumed in the fully-funded model. The fully-funded model is the model as calculated under §355.723(d) of this title (relating to Reimbursement Methodology for Home and Community-based Services) prior to any adjustments made in accordance with §355.101 of this title and §355.109 of this title (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs) for the rate period.

(3) Calculation of allowable hours for attendants [~~direct staff except for direct-care trainer supervisors and direct-care worker supervisors~~]. Allowable hours per unit of service for an attendant [~~a direct service staff-type~~] when the reported hours [~~for the staff-type~~] include related-party hours, are determined as follows:

(A) Step 1. Determine the hours per unit of service for a comparable attendant-service [~~direct service~~] staff-type assumed in the fully-funded model as defined in paragraph (2) of this subsection, adjusted for the provider's average Level of Need (LON) during the reporting period. For TxHmL, until such time as LONs are established, the provider's average LON is assumed to be LON 5.

(B) Step 2. Determine the hours per unit of service encompassed by the 90th percentile in the array of hours per unit of service for comparable attendant-service [~~direct service~~] staff-types as reported by those contracted providers not reporting any related-party hours for that staff-type, adjusted for the provider's average LON during the reporting period. For TxHmL, until such time as LONs are established, the provider's average LON is assumed to be LON 5.

(C) Step 3. Determine the greater of Step 1 and Step 2.

(D) Step 4. Determine the actual hours worked by the staff-type per unit of service.

(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable hours per unit of service for the attendant-service [~~direct service~~] staff-type in question.

[~~(4) Calculation of allowable hours for direct-care trainer supervisors or direct-care worker supervisors. Allowable direct-care trainer supervisor or direct-care worker supervisor hours when the reported direct-care trainer supervisor or direct-care worker supervisor hours include related-party hours, are determined separately as follows:~~]

[~~(A) Step 1. Determine the ratio of direct-care trainer supervisor or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours assumed in the fully-funded model as defined in paragraph (2) of this subsection.~~]

[~~(B) Step 2. Determine the ratio of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours encompassed by the 90th percentile in the array of ratios of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours for those contracted providers not reporting any related-party direct-care trainer or direct-care worker supervisor hours.~~]

[~~(C) Step 3. Determine the greater of Step 1 and Step 2.~~]

[(D) Step 4. Determine the actual ratio of direct-care trainer or direct-care worker supervisor hours to direct-care trainer or direct-care worker hours.]

[(E) Step 5. Determine the lesser of Step 4 and Step 3. This value is the allowable ratio of direct-care trainer or direct-care worker supervisor hours to allowable direct-care trainer or direct-care worker hours reported. To determine the actual allowable direct-care trainer supervisor or direct-care worker supervisor hours, multiply the allowable direct-care trainer or direct-care worker hours by the allowable ratio of direct-care trainer supervisor or direct-care worker supervisor hours to allowable direct-care trainer or direct-care worker hours.]

[(5) Calculation of allowable hours for other staff types. For staff types where representative hours and units of service data are not available, allowable related-party hours are determined using a pro forma approach in which factors such as hours assumed in the fully-funded model, median non-related party hours reported, and non-related party hours or staff ratios for similar staff types are considered.]

(4) [(6)] Exception to related-party adjustment. If at least 40 percent of total labor hours in a specific related-party's attendant-service staff-type [direct service type] were provided by non-related-parties, the related-party's hourly wage rate may be the higher of the model assumption for that attendant-service staff-type [direct service type] described in paragraph (2) of this subsection or the non-related party average for that attendant-service staff-type [direct service type], so long as the non-related party average does not exceed the related-party's actual hourly wage.

(5) [(7)] Maximum attendant-care [direct-care] hours. During any single fiscal year, the sum of all attendant-care [direct-care] hours reported on any [HCS and TxHmL] cost report(s) for any individual owner or related party cannot exceed 2,600.

(6) [(8)] Classification of hours over the limit. Hours, hourly wages and benefits above the limits described in paragraphs (2) - (5) [(7)] of this subsection are to be reported as administrative hours, hourly wages and benefits.

(i) Adjusting reported cost. Each provider's total reported allowable costs, excluding depreciation and mortgage interest, are projected from the historical cost-reporting period to the prospective reimbursement period as described in §355.108 of this title (relating to Determination of Inflation Indices). HHSC may adjust reimbursement if new legislation, regulations, or economic factors affect costs, according to §355.109 of this title.

(j) Fiscal Accountability for HCS. This subsection applies to services delivered on or before August 31, 2009 and only for HCS program services.

(1) General principles. Fiscal accountability is a process used to gauge the ongoing financial performance under the reimbursement rates.

(2) Annual reporting. Fiscal accountability will consist of the annual reporting of the direct service costs including wages, and benefits, from all providers. The data will be collected on a cost report designed by HHSC in accordance with §355.105(b) of this title.

(A) The Department of Aging and Disability Services (DADS) will place a vendor hold on payments to a provider whose provider agreement is being assigned or terminated. The provider will submit a cost report for the current reporting period to HHSC. Upon receipt of an acceptable cost report and repayment of any amounts due in accordance with this section, the vendor hold will be released.

(B) Providers that do not submit a cost report completed in accordance with all applicable rules and instructions within 60 days of the placement of a vendor hold due to the failure to submit the cost report are subject to an immediate recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the due date, the recoupment will become permanent.

(C) Providers with an ownership change from one legal entity to a different legal entity or a contract termination that do not submit a cost report for the fiscal year of the ownership change or contract termination within 60 days of the change of ownership or contract termination are subject to recoupment of funds related to fiscal accountability as described in paragraph (4)(E) of this subsection. The recouped funds will not be restored until the provider submits an acceptable cost report and has paid the actual amount due as specified in paragraphs (5) - (7) of this subsection. If an acceptable cost report is not received within 365 days of the change of ownership or contract termination date, the recoupment will become permanent.

(3) Comparison of direct-service costs to total direct-service revenue. HHSC will require providers to report all direct costs incurred on an annual fiscal year basis. HHSC will compare the reported direct service costs to the total direct service revenue.

(4) Calculation of direct-service revenues and fiscal accountability repayment. Direct Service Revenues are calculated by multiplying the number of units eligible for payment that have been paid for services delivered during the reporting period times the appropriate direct service portion of the rate for the service billed.

(A) Providers whose direct service costs are 90% or more of the direct service revenues will not be subject to repayment under this section.

(B) Providers whose direct service costs are less than 90% but greater than or equal to 85% of the direct service revenues will be required to pay to DADS 50% of the difference between the direct service costs and 90% of the direct service revenues.

(C) Providers whose direct service costs are less than 85% but greater than or equal to 80% of the direct service revenues will be required to pay to DADS 100% of the difference between the direct service costs and 85% of the direct service revenues plus 50% of the difference between 85% and 90% of the direct service revenues.

(D) Providers whose direct service costs are less than 80% of the direct service revenues will be required to pay to DADS the difference between the direct service costs and 95% of the direct service revenues.

(E) Providers who do not submit a cost report as described in paragraph (2)(B) or (C) of this subsection will be assumed to have direct service costs equal to 65% of the direct services revenues and will be required to pay to DADS the difference between 65% of the direct services revenues and 95% of the direct service revenues, subject to the provisions of paragraph (2)(B) or (C) of this subsection.

(5) Notification of recoupment. Providers will be notified, by certified mail, within 90 days of the determination of their recoupment amount by HHSC of the amount to be repaid to HHSC [or its designee]. If a subsequent review by HHSC or audit results in adjustments to the cost report as described in subsection (a) of this section that change the amount to be repaid to HHSC [or its designee], the provider will be notified in writing of the adjustments and the adjusted amount to be repaid. Providers will submit the repayment amount within 60 days of notification.

(6) Repayment. Repayment will be made by the following:

(A) the provider or legal entity submitting the report;

(B) any other legal entity responsible for the debts or liabilities of the submitting entity; or

(C) the legal entity on behalf of which a report is submitted.

(7) Providers required to repay revenues to DADS will be jointly and severally liable for any repayment. DADS will apply a vendor hold on Medicaid payments to a provider for not making the payment to DADS within 60 days of receiving notice.

(8) Aggregation.

(A) Definitions. The following words and terms have the following meanings when used in this paragraph.

*(i)* Aggregation--For an entity defined in clause (iii) of this subparagraph that controls, as defined in clause (iv) of this subparagraph, more than one HCS component code, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes controlled by the entity in the aggregate rather than requiring each component code to meet its spending requirement individually. For commonly owned corporations defined in clause (ii) of this subparagraph, the process of determining compliance with the spending requirements detailed in paragraph (4) of this subsection for all component codes in the controlled small group in the aggregate rather than requiring each component code to meet its spending requirement individually. Corporations that do not meet the definitions under clauses (ii) - (iii) of this subparagraph are not eligible for aggregation.

*(ii)* Commonly owned corporations--two or more corporations where five or fewer identical persons who are individuals, estates, or trusts own greater than 50 percent of the total voting power in each corporation.

*(iii)* Entity--a parent company, sole member, individual, limited partnership, or group of limited partnerships controlled by the same general partner.

*(iv)* Control--greater than 50% ownership by the entity.

(B) Component Codes Included in Aggregation. If an entity controlling more than one HCS component code or commonly owned corporations requests aggregation, compliance with the spending requirements will be evaluated in the aggregate for all HCS component codes that the entity or commonly owned corporations controlled at the end of its fiscal year or at the effective date of the change of ownership or termination of its last HCS contract.

(C) Aggregation Request. To exercise the aggregation option, the entity or commonly owned corporations must submit an aggregation request, in a manner prescribed by HHSC, at the time each cost report is submitted. In limited partnerships in which the same single general partner controls all the limited partnerships, that single general partner must make this request. Other such aggregation requests will be reviewed on a case-by-case basis.

(D) Frequency of Aggregation Requests. The entity or commonly owned corporations must submit a separate request for aggregation for each reporting period.

(E) Ownership Changes and Contract Terminations. HCS contracts that change ownership or terminate effective after the end of the applicable reporting period, but prior to the determination of compliance with spending requirements as per paragraph (4) of this subsection, are excluded from all aggregate spending calculations. These contracts' compliance with spending requirements will be determined on an individual basis and the costs and revenues will not be included in the aggregate spending calculation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102495
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 424-6900

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## SUBCHAPTER J. PURCHASED HEALTH SERVICES
## DIVISION 4. MEDICAID HOSPITAL SERVICES

### 1 TAC §355.8065

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8065, concerning Disproportionate Share Hospital (DSH) Reimbursement Methodology. The proposed amendment updates language in the rule related to the federal DSH audit rule and clarifies current administrative processes.

Background and Justification

Hospitals participating in the Texas Medicaid program that meet the DSH program conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement through the DSH program. HHSC, as the Medicaid single state agency, establishes each hospital's eligibility for DSH reimbursement and the amount of reimbursement, as specified in §355.8065.

HHSC proposes to update §355.8065 based on issues related to the federal DSH audit rule published in the *Federal Register* on December 19, 2008, as 42 C.F.R. §447.299(c) and (d) and 42 C.F.R. §§455.300 through 455.304, to satisfy requirements set out in Social Security Act §1923(j). The federal DSH audit rule implements requirements for reporting DSH program payments by states and audits of such reporting.

HHSC proposes the following changes:

First, the amendment updates definitions related to the DSH data year; hospital fiscal year; mean Medicaid inpatient utilization rate; Medicaid state plan rate year; metropolitan statistical area; outpatient charges; ratio of cost-to-charges (inpatient only); ratio of cost-to-charges (inpatient and outpatient); total Medicaid days; total Medicaid inpatient payments; and uninsured patient.

Second, the amendment updates the eligibility and qualification section to better explain HHSC's current DSH process.

Third, the amendment updates the conditions of participation requirements to: (1) reference the provision in the federal statute related to the application of the two-physician requirement; and (2) be consistent with the Department of State Health Services'

(DSHS') rules governing procedures for obtaining a trauma designation.

Fourth, the amendment adds language to the process describing calculation of the hospital-specific limit to allow use of uninsured charges incurred by an institution for mental diseases (IMD) for patients between the ages of 21 and 64. It also clarifies that hospitals should report on their DSH application all payments received during the DSH data year for services that would be covered by Medicaid provided to uninsured patients. Additionally, the Centers for Medicare and Medicaid Services (CMS) interprets federal law to require use of a cost-center ratio of cost to charges, rather than the all-payer ratio that HHSC has used in the past. CMS has indicated to HHSC that use of an all-payer ratio to calculate DSH payments would result in an audit finding that the state is out of compliance with DSH requirements. The proposed amendment reflects that federal requirement.

Fifth, the amendment clarifies how HHSC distributes DSH funds to IMDs.

Sixth, the amendment proposes higher weights for DSH children's hospitals to assure an adequate level of Medicaid funding for services provided to the Texas Medicaid recipients and to the uninsured patients the hospitals serve.

Seventh, the amendment updates language that authorizes HHSC to require an independent third party audit review of revised self-reported data that a hospital already verified and submitted The purpose is to encourage proper reviews and the authenticity of data used in the original submissions and decrease appeals based on errors found in the review.

Finally, language is added that describes the review process a hospital must follow if it wishes to question an audit finding.

The rule includes other non-substantive changes to make the rule more understandable.

Section-by-Section Summary

The rule amendment includes the following:

Proposed subsection (b)(22) updates the definition of "mean Medicaid inpatient utilization rate" to account for the impact of dually-eligible patients.

Proposed subsection (b)(28) updates the definition of an "MSA" (Metropolitan Statistical Area) based on changes in the latest census figures. The MSA population floor was raised from 121,000 to 137,000 to reflect current data. The current DSH database supports this change to keep program consistency.

Proposed subsection (b)(30) adds a definition for "outpatient charges."

Proposed subsections (b)(32), (b)(33), (d)(2)(B), (f)(3)(A), (f)(3)(B), and (f)(4)(A) were revised to reflect HHSC's use of cost-center ratios versus all-payer ratios at CMS's direction.

Proposed subsection (b)(39) amends the definition of "total Medicaid inpatient hospital payments" to specify that inpatient services must be Medicaid-covered services in order to be included in the total Medicaid inpatient hospital payments amount. The amendment also deletes subparagraph (C) regarding hospital-specific limits because the defined term is not used in subsection (f) in reference to hospital-specific limits.

Proposed section (b)(42) revises the definition of "uninsured patient" to be consistent with CMS's interpretation of that term.

Proposed subsection (c)(2) updates the eligibility requirement related to Medicaid payments to require at least one inpatient claim other than for a dually eligible patient.

Proposed subsection (d)(2)(A)(iii) was deleted, as HHSC will use the DSH application to request this data in the format required.

Proposed subsection (d)(2)(B) was revised to reflect CMS's direction to use a cost-center ratio of charges and not the all-payor cost of charges.

Proposed subsection (d)(3)(B) updates the definition of the urban county threshold due to changes in the latest census figures. The urban county threshold floor was raised from 250,000 to 290,000. The current DSH database supports this change to keep program consistency.

Proposed subsection (d)(4) clarifies the types of hospitals that are deemed to be eligible for the DSH program.

Proposed subsection (e)(1) is updated to incorporate provisions in the federal statute related to the application of the two-physician requirement in the DSH program.

Proposed subsection (e)(2) updates language to require that a hospital have a Medicaid inpatient utilization rate of at least one percent at the time of qualification and during the DSH program year.

Proposed subsection (e)(3) adds language to clarify the period during which a hospital must meet the trauma condition of participation requirement.

Proposed subsection (e)(3)(A) was revised to be consistent with the language of DSHS' rules governing trauma designations. To be eligible for DSH, a hospital must be designated as a trauma hospital or be "in active pursuit" of such designation.

Proposed subsection (e)(5) requires a hospital to retain records related to DSH data for at least five years from the start of each DSH program year.

Proposed subsection (f)(2)(A)(i) updates the time frame for reporting uninsured charges and allows an IMD to include as uninsured charges the Medicaid-covered services it provided to Medicaid eligible patients between the ages of 21 and 64.

Proposed subsection (f)(2)(A)(i) and (ii) clarifies that a hospital must report all payments received during the DSH data year for services that would be covered by Medicaid that are provided to uninsured patients.

Proposed subsection (f)(2)(B) updates the list of included and excluded charges and payments related to the computation of the Medicaid shortfall. Charges and payments for outpatient claims associated with the Women's Health Program are now included.

Proposed subsection (f)(2)(B)(iv) was revised to include relevant supplemental payments in the Medicaid shortfall methodology.

Proposed subsection (f)(2)(B)(vi) allows HHSC to apply an adjustment factor to the calculation of the Medicaid shortfall when changes are made to reimbursement rates.

Proposed subsection (f)(3) updates the methodology HHSC uses to compute the ratio of cost to charges as well as the process by which HHSC obtains the data necessary to calculate the amount.

Proposed subsection (f)(4) updates the description of the final hospital specific limit to describe that HHSC will use actual costs incurred and payments received during the DSH program year.

Proposed subsection (g)(2) describes the process HHSC uses to determine the distribution of funds to IMD facilities. The proposed amendment eliminates the ability of HHSC to treat state-owned or operated IMDs preferentially to non-state facilities.

Proposed subsection (h)(2)(C)(i) updates the children's hospital weighting factor to assure an adequate level of Medicaid funding for services provided to the Texas Medicaid population and uninsured patients they serve.

Proposed subsection (h)(2)(C)(ii)(I) changes the MSA threshold from 121,000 to 137,000 to accurately reflect recent census data.

Subsection (i)(4) is deleted because it duplicates a hospital's right of review described in subsection (j).

Proposed subsection (j)(3)(C)(ii) and (iii), related to requests for review based on a hospital's self-reported DSH data, authorizes HHSC to require supporting documentation of the revised data and to require an independent third party audit of the revised data, to be paid for by the hospital requesting the change and within the time frame determined by HHSC.

In subsection (o)(1)(F), language governing the recovery of audit costs from audited non-state hospitals for audits required by federal law was deleted. New language in (o)(1)(F) describes the review process a hospital can follow if it questions a preliminary audit finding of overpayment.

The proposed rule includes other technical corrections and non-substantive changes throughout to make the rule more understandable.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for the first five years the proposed amendment is in effect, there are no fiscal implications for state government as a result of enforcing or administering the proposed amendments to this section. The amount of DSH funds allocated to each state is determined by the federal government. It is not anticipated that the changes proposed in this rule will impact the total DSH funds received by the state. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small Business and Micro-Business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro businesses to comply with the proposal, as they will not be required to alter their business practices as a result of the amendments to the rule. The federal government sets the state allocation of DSH funds each federal fiscal year. This proposed rule amendment does not change that allocation. In addition, HHSC cannot predict the amount individual qualified hospitals receive in DSH funds each year due to changes in the data components that determine the payment of DSH funds. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Carolyn Pratt has determined that for each of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that the state will conform to the federal requirements relating to the DSH program. In addition, the revisions included in the rule will assist interested parties in understanding the DSH reimbursement methodology by providing clearer language that is easier to understand.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Diana Miller, Senior Rate Analyst in the Rate Analysis Department, Texas Health and Human Services Commission, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200, by fax to (512) 491-1983, or by e-mail to diana.miller@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 531 and Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

*§355.8065. Disproportionate Share Hospital (DSH) Reimbursement Methodology.*

(a) Introduction. Hospitals participating in the Texas Medical Assistance (Medicaid) program that meet the conditions of participation and that serve a disproportionate share of low-income patients are eligible for additional reimbursement from the disproportionate share hospital (DSH) fund. HHSC will establish each hospital's eligibility for and amount of reimbursement. This section applies to all hospitals that participate in the DSH program.

(b) Definitions. For the purposes of this section, the following words and terms have the following meanings unless the context clearly indicates otherwise.

(1) Adjudicated claim--A hospital claim for payment for a covered Medicaid service that is paid or adjusted by HHSC or another payer.

(2) Available DSH funds--The annual allotment of funds that may be reimbursed to all DSH-eligible providers.

(3) Bad debt--A debt arising when there is nonpayment on behalf of an individual who has third-party coverage.

(4) Centers for Medicare and Medicaid Services (CMS)--The federal agency within the United States Department of Health and Human Services responsible for overseeing and directing Medicare and Medicaid.

(5) Charity care--The unreimbursed cost to a hospital of providing, funding, or otherwise financially supporting health care services on an inpatient or outpatient basis to indigent individuals, either directly or through other nonprofit or public outpatient clinics, hospitals, or health care organizations. A hospital must set the income level for eligibility for charity care consistent with the criteria established in §311.031, Texas Health and Safety Code.

(6) Charity charges--Total amount of hospital charges for inpatient and outpatient services attributed to charity care in a DSH data year. These charges do not include bad debt charges, contractual allowances, or discounts given to other legally liable third-party payers.

(7) Children's hospital--A hospital within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(8) Disproportionate share hospital--A hospital identified by HHSC that meets the Disproportionate Share Hospital (DSH) program conditions of participation and that serves a disproportionate share of Medicaid and/or indigent patients.

(9) DSH data year--A twelve-month period, two years before the DSH program year, from which HHSC will compile data to determine DSH program qualification and payment. [~~For DSH program years beginning in 2011 and thereafter, the DSH data year will be October 1 through September 30 two years prior to the DSH program year. For example, the DSH data year is 2009 (October 1, 2008 - September 30, 2009) for the 2011 DSH program year (October 1, 2010 - September 30, 2011).~~]

(10) DSH program year--The twelve-month period beginning October 1 and ending September 30. [~~This corresponds with the Medicaid state plan rate year.~~]

(11) Dually eligible patient--A patient who is simultaneously eligible for Medicare and Medicaid.

(12) HHSC--The Texas Health and Human Services Commission or its designee.

[~~(13) Hospital fiscal year--A twelve-month accounting period designated by a hospital.~~]

(13) [~~(14)~~] Hospital-specific limit--The maximum amount a hospital may receive in a DSH program year, based on costs arising from individuals receiving hospital services who are Medicaid eligible or uninsured, not costs arising from individuals who have third-party coverage.

(A) An interim hospital-specific limit will be trended forward to the DSH program year using an inflation update factor to account for inflation since the DSH data year.

(B) A final hospital-specific limit will be calculated using actual DSH program year cost and payment data.

(14) [~~(15)~~] Independent certified audit--An audit that is conducted by an auditor that operates independently from the Medicaid agency and the audited hospitals and that is eligible to perform the DSH audit required by CMS.

(15) [~~(16)~~] Indigent individual--An individual classified by a hospital as eligible for charity care.

(16) [~~(17)~~] Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(17) [~~(18)~~] Inpatient day--Each day that an individual is an inpatient in the hospital, whether or not the individual is in a specialized ward and whether or not the individual remains in the hospital for lack of suitable placement elsewhere. The term includes observation days, rehabilitation days, psychiatric days, and newborn days. The term does not include swing bed days or skilled nursing facility days.

(18) [~~(19)~~] Inpatient revenue--Amount of gross inpatient revenue [~~(charges)~~] derived from the most recent completed Medicaid cost report or reports related to the applicable DSH data year. Gross inpatient revenue excludes revenue related to the professional services of hospital-based physicians, swing bed facilities, skilled nursing facilities, intermediate care facilities, other nonhospital revenue, and revenue not identified by the hospital.

(19) [~~(20)~~] Institution for Mental Disease (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment, or care of individuals with mental illness.

(20) [~~(21)~~] Low-income days--Number of inpatient days attributed to indigent patients.

(21) [~~(22)~~] Low-income utilization rate--A DSH qualification criterion calculated as described in subsection (d)(2) of this section.

(22) [~~(23)~~] Mean Medicaid inpatient utilization rate--The average of Medicaid inpatient utilization rates for all hospitals that have received a Medicaid payment for an inpatient claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year [~~all active Medicaid hospitals' Medicaid inpatient utilization rates~~].

(23) [~~(24)~~] Medicaid contractor--Fiscal agents and managed care organizations with which HHSC contracts to process data related to the Medicaid program.

(24) [~~(25)~~] Medicaid cost report--Hospital and Hospital Health Care Complex Cost Report (Form CMS 2552), also known as the Medicare cost report.

(25) [~~(26)~~] Medicaid hospital--A hospital meeting the qualifications set forth in §354.1077 of this title (relating to Provider Participation Requirements) to participate in the Texas Medical Assistance program.

(26) [~~(27)~~] Medicaid inpatient utilization rate--A DSH qualification criterion calculated as described in subsection (d)(1) of this section.

(27) [~~(28)~~] Medicaid shortfall--The unreimbursed cost of Medicaid inpatient and outpatient hospital services furnished to Medicaid patients.

[~~(29) Medicaid state plan rate year--The twelve-month period corresponding to the DSH program year.~~]

(28) [~~(30)~~] MSA--Metropolitan Statistical Area as defined by the United States Office of Management and Budget. MSAs with populations greater than or equal to 137,000 [~~121,000~~], according to the most recent decennial census, are considered "the largest MSAs."

(29) [~~(31)~~] Obstetrical services--The medical care of a woman during pregnancy, delivery, and the post-partum period provided at the hospital listed on the DSH application.

(30) Outpatient charges--Amount of gross outpatient charges related to the applicable DSH data year and used in the calculation of the Medicaid shortfall.

(31) [~~(32)~~] PMSA--Primary Metropolitan Statistical Area as defined by the United States Office of Management and Budget.

(32) [~~(33)~~] Ratio of cost-to-charges (inpatient only)--A cost center [~~An all-payer~~] ratio that covers all applicable hospital costs and charges relating to inpatient care. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(33) [~~(34)~~] Ratio of cost-to-charges (inpatient and outpatient)--A Medicaid cost report-derived cost center [~~all-payer~~] ratio that covers all applicable hospital costs and charges relating to patient care, inpatient and outpatient. This ratio does not distinguish between payer types such as Medicare, Medicaid, or private pay.

(34) [~~(35)~~] Rural area--Area outside an MSA or a PMSA.

(35) [~~(36)~~] State chest hospital--A public health facility operated by the Department of State Health Services designated for the care and treatment of patients with tuberculosis.

~~[(37) State fiscal year--September 1 through August 31.]~~

(36) [~~(38)~~] State-owned teaching hospital--A hospital owned and operated by a state university or other state agency.

(37) [~~(39)~~] Third-party coverage--Creditable insurance coverage consistent with the definitions in 45 Code of Federal Regulations (CFR) Parts 144 and 146, or coverage based on a legally liable third-party payer.

(38) [~~(40)~~] Total Medicaid inpatient days--Total number of inpatient days based on adjudicated claims data for covered services for the relevant DSH data year.

(A) The term includes:

*(i)* Medicaid-eligible days of care adjudicated by managed care organizations;

*(ii)* days that were denied payment for spell-of-illness limitations;

*(iii)* days attributable to individuals eligible for Medicaid in other states, including dually eligible patients;

*(iv)* days with adjudicated dates during the period; and

*(v)* days for dually eligible patients for purposes of the calculation in subsection (d)(1) of this section.

(B) The term excludes:

*(i)* days attributable to Medicaid-eligible patients between the ages of 21 and 64 [~~65~~] in an IMD;

*(ii)* days denied for late filing and other reasons; and

*(iii)* days for dually eligible patients for purposes of the calculation in subsections (d)(3) and (h)(2) of this section.

(39) [~~(41)~~] Total Medicaid inpatient hospital payments--Total amount of Medicaid funds that a hospital received for adjudicated claims for covered inpatient services during the DSH data year. The term includes payments that the hospital received:

(A) for covered inpatient services from managed care organizations; and

(B) for patients eligible for Medicaid in other states. [~~; and~~]

~~[(C) for purposes of calculating the final hospital-specific limit, the term includes all inpatient hospital supplemental payments.]~~

(40) [~~(42)~~] Total state and local revenue--Total amount of state and local payments that a hospital received for inpatient care during the DSH data year. The term includes payments under state and local programs that are funded entirely with state general revenue funds and state or local tax funds, such as County Indigent Health Care, Children with Special Health Care Needs, Kidney Health Care, and certain Children's Health Insurance Program (CHIP) payments. The term excludes payment sources that contain federal dollars such as Medicaid payments, Children's Health Insurance Program (CHIP) payments funded under Title XXI of the Social Security Act, Substance Abuse and Mental Health Services Administration, Ryan White Title I, Ryan White Title II, Ryan White Title III, and contractual discounts and allowances related to TRICARE, Medicare, and Medicaid.

(41) [~~(43)~~] Uninsured cost--The cost to a hospital of providing inpatient and outpatient hospital services to uninsured patients as defined by the Centers for Medicare and Medicaid Services.

(42) [~~(44)~~] Uninsured patient--An individual who has no health insurance or other source of third-party coverage for services. [~~Subject to federal statutes and regulations, an individual whose third-party coverage does not include the service provided is considered by HHSC to be uninsured for that service.~~]

(43) [~~(45)~~] Upper Payment Limit (UPL) program--Supplemental Medicaid payments made to certain eligible hospitals for inpatient and outpatient services based on State and Federal guidelines.

(44) [~~(46)~~] Urban area--Area inside an MSA or PMSA.

(45) [~~(47)~~] Weighted low-income days--Low-income days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.

(46) [~~(48)~~] Weighted Medicaid days--Medicaid days that are adjusted based on the population of the MSA or PMSA in which a hospital is located.

(c) Eligibility. To be eligible to participate in the DSH program, a hospital must:

(1) be enrolled as a Medicaid hospital in the State of Texas;

(2) have received a Medicaid payment for an inpatient [~~a~~] claim, other than a claim for a dually eligible patient, that was adjudicated during the relevant DSH data year; and

(3) apply annually by completing the application packet received from HHSC by the deadline specified in the packet.

(A) Only a hospital that meets the condition specified in paragraph (2) of this subsection will receive an application packet from HHSC.

(B) The application may request self-reported data that HHSC deems necessary to determine each hospital's eligibility. HHSC may audit self-reported data.

(C) A hospital that fails to submit a completed application by the deadline specified by HHSC will not be eligible to participate in the DSH program in the year being applied for or to appeal HHSC's decision.

(D) For purposes of DSH eligibility, a multi-site hospital is considered one provider unless it submits separate Medicaid cost reports for each site. If a multi-site hospital submits separate Medicaid cost reports for each site, for purposes of DSH eligibility, it must submit a separate DSH application for each eligible site.

(E) HHSC will consider a merger of two or more hospitals for purposes of the DSH program for any hospital that submits a CMS tie-in notice prior to the DSH program year. Otherwise, HHSC

will determine the merged entity's eligibility for the subsequent DSH program year. Until the time that the merged hospitals are determined eligible for payments as a merged hospital, each of the merging hospitals will continue to receive any DSH payments to which it was entitled prior to the merger.

(d) Qualification. For each DSH program year, in addition to meeting the eligibility requirements, applicants must meet at least one of the following qualification criteria, which are determined using information from a hospital's application[~~, the annual hospital survey conducted under Chapter 311, Health and Safety Code,~~] or from HHSC's Medicaid contractors, as specified by HHSC:

(1) Medicaid inpatient utilization rate. A hospital's inpatient utilization rate is calculated by dividing the hospital's total Medicaid inpatient days by its total inpatient census days for the DSH data year.

(A) Rural hospital: A rural hospital must have a Medicaid inpatient utilization rate greater than the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(B) Urban hospital: An urban hospital must have a Medicaid inpatient utilization rate that is at least one standard deviation above the mean Medicaid inpatient utilization rate for all Medicaid hospitals.

(2) Low-income utilization rate. A hospital must have a low-income utilization rate greater than 25 percent.

(A) The low-income utilization rate is the sum (expressed as a percentage) of the fractions calculated in clauses (i) and (ii) of this subparagraph:

*(i)* The sum of the total Medicaid inpatient hospital payments and the total state and local revenue paid to the hospital for inpatient care in the DSH data year, divided by a hospital's gross inpatient revenue multiplied by the hospital's ratio of cost-to-charges (inpatient only) for the same period: (Total Medicaid Inpatient Hospital Payments + Total State and Local Revenue)/(Gross Inpatient Revenue x Ratio of Costs to Charges).

*(ii)* Inpatient charity charges in the DSH data year minus the amount of payments for inpatient hospital services received directly from state and local governments, excluding all Medicaid payments, in the DSH data year, divided by the gross inpatient revenue in the same period: (Total Inpatient Charity Charges - Total State and Local Payments)/Gross Inpatient Revenue.

~~*f(iii)* If a hospital fails to allocate state and local tax revenue between inpatient and outpatient revenue, HHSC will make the proportional allocation using data contained in the latest available Medicaid cost report(s) or Medicaid cost report for the DSH data year.]~~

(B) HHSC will determine the ratio of cost-to-charges (inpatient only) by using information from the appropriate worksheets of each hospital's Medicaid cost report or reports that correspond to the DSH data year. In the absence of a Medicaid cost report for that period, HHSC will use the latest available submitted Medicaid cost report or reports. [~~as follows:~~]

~~*f(i)* HHSC will first compute the ratio of total inpatient revenue to total patient revenue using Worksheet G-2, Part I, of the Medicaid cost report.]~~

~~*f(ii)* The total costs from Worksheet B, Part I, are then multiplied by this computed ratio to determine the total inpatient costs.]~~

~~*f(iii)* To calculate the ratio of cost-to-charges (inpatient only), HHSC will divide the computed inpatient costs of Worksheet B, Part I, by the inpatient revenue of Worksheet G-2, Part I.]~~

~~*f(iv)* HHSC will exclude those inpatient costs and inpatient revenue for nonhospital services such as ambulance, rural health clinics, primary home care, home health agencies, hospice, and skilled nursing facilities.]~~

(3) Total Medicaid inpatient days.

(A) A hospital must have total Medicaid inpatient days at least one standard deviation above the mean total Medicaid inpatient days for all hospitals participating in the Medicaid program, except;

(B) A hospital in an urban county with a population of 290,000 [~~250,000~~] persons or fewer, according to the most recent decennial census, must have total Medicaid inpatient days at least 70 percent of the sum of the mean total Medicaid inpatient days for all hospitals in this subset plus one standard deviation above that mean.

(C) Days for dually eligible patients are not included in the calculation of total Medicaid inpatient days under this paragraph.

(4) Children's hospitals, state-owned teaching hospitals, and state chest hospitals. Children's hospitals, state-owned teaching hospitals, and state chest hospitals that do not otherwise qualify as disproportionate share hospitals will be deemed disproportionate share hospitals.

(5) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. HHSC will aggregate the data used to determine qualification under this subsection from the merged hospitals to determine whether the single Medicaid provider that results from the merger qualifies as a Medicaid disproportionate share hospital.

(e) Conditions of participation. HHSC will require each hospital to meet and continue to meet for each DSH program year the [~~certify during the application process that, as of the date of the certification, it meets and will continue to meet during the DSH program year the~~] following conditions of participation:

(1) Two-physician requirement.

(A) In accordance with Social Security Act §1923(e)(2), a [~~A~~] hospital must have at least two licensed physicians (doctor of medicine or osteopathy) who have hospital staff privileges and who have agreed to provide nonemergency obstetrical services to individuals who are entitled to medical assistance for such services. [~~The two-physician requirement does not apply to a children's hospital or to a hospital that~~]

(B) Subparagraph (A) of this paragraph does not apply if the hospital:

*(i)* serves inpatients who are predominantly under 18 years of age; or

*(ii)* was operating but did not offer nonemergency obstetrical services as of December 22, 1987.

(C) A hospital must certify on the DSH application that it meets the conditions of either subparagraph (A) or (B) of this paragraph, as applicable, at the time the DSH application is submitted.

(2) Medicaid inpatient utilization rate. At the time of qualification and during the DSH program year, a [~~Each~~] hospital must have a Medicaid inpatient utilization rate, as calculated in subsection (d)(1) of this section, of at least one percent.

(3) Trauma system.

(A) The hospital [~~Disproportionate share hospitals~~] must be in active pursuit or have obtained [~~obtain and maintain~~] a trauma facility designation as defined in §§773.111 - 773.120, Health and Safety Code, and consistent with 25 TAC §157.125 (relating to Requirements for Trauma Facility Designation). A hospital that has obtained its trauma facility designation must maintain that designation for the entire DSH program year.

(B) HHSC will receive an annual report from the Office of EMS/Trauma Systems Coordination regarding hospital participation in regional trauma system development, application for trauma facility designation, and trauma facility designation status before final qualification determination for interim DSH payments. HHSC will use this report to confirm compliance with this condition of participation by a hospital applying for DSH funds.

(4) Maintenance of local funding effort. A hospital district in one of the state's largest MSAs or in a PMSA must not reduce local tax revenues to its associated hospitals as a result of disproportionate share funds received by the hospital. For this provision to apply, the hospital must have more than 250 licensed beds.

(5) Retention of and access [~~Access~~] to records. A hospital must retain and make available to HHSC and its designee [~~HHSC must have access to the hospital's~~] records and accounting systems related to DSH data for at least five years from the start of each DSH program year in which the hospital qualifies [~~during regular business hours~~].

(6) Compliance with audit requirements. A hospital must agree to comply with the audit requirements described in subsection (o) of this section.

(7) Merged hospitals. Merged hospitals are subject to subsection (c)(3)(E) of this section. If HHSC receives the CMS tie-in notice prior to the DSH program year, the merged entity must meet all conditions of participation. If HHSC does not receive the CMS tie-in notice prior to the DSH program year, any proposed merging hospitals that are receiving DSH payments must continue to meet all conditions of participation as individual hospitals to continue receiving DSH payments for the remainder of the DSH program year.

(f) Calculating a hospital-specific limit. Using information from each hospital's DSH application and HHSC's Medicaid contractors, HHSC annually will determine the interim hospital-specific limit for each hospital applying for DSH funds in compliance with paragraphs (1) - (3) of this subsection. HHSC will also determine the final hospital-specific limit in compliance with paragraph (4) of this subsection.

(1) HHSC will calculate a hospital's interim hospital-specific limit by adding the hospital's net uninsured costs for the DSH data year and its Medicaid shortfall for the DSH data year, both adjusted for inflation.

(2) HHSC will determine the individual components of the hospital-specific limit as follows:

(A) Uninsured costs.

*(i)* Each hospital will report in its DSH application its inpatient and outpatient charges [~~incurred~~] for services that would be covered by Medicaid that were provided to uninsured patients discharged [~~admitted~~] during the DSH data year. In addition to the charges in the previous sentence, an IMD may report charges for services that would be covered by Medicaid that were provided during the DSH data year to Medicaid eligible patients between the ages of 21 and 64.

*(ii)* Each hospital will report in its DSH application all payments received for services that would be covered by Medicaid that are provided to uninsured patients discharged [~~admitted~~] during the DSH data year.

*(I)* For purposes of this rule, a payment received is any payment from an uninsured patient or from a third party (other than an insurer) on the patient's behalf, including payments received for emergency health services furnished to undocumented aliens under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173, except as described in subclause (II) of this clause. [~~that;~~]

*(II)* State and local payments to hospitals for indigent care are not included as payments made by or on behalf of uninsured patients.

*(iii)* HHSC will convert uninsured charges to uninsured costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

*(iv)* HHSC will subtract all payments received under clause (ii) of this subparagraph from the uninsured costs under clause (iii) of this subparagraph, resulting in net uninsured costs.

(B) Medicaid shortfall.

*(i)* HHSC will request from its Medicaid contractors the inpatient and outpatient Medicaid charge and payment data for claims adjudicated during the DSH data year for all active Medicaid participating hospitals. There are circumstances, including the following, in which HHSC will request modifications to the adjudicated data.

*(I)* HHSC will include as appropriate charges and payments for:

(-a-) claims [~~Charges and payments~~] associated with the care of dually eligible patients, including Medicare charges and payments; [~~and~~]

(-b-) [~~Charges for~~] claims or portions of claims that were not paid because they exceeded the spell-of-illness limitation; and[~~.~~]

(-c-) outpatient claims associated with the Women's Health Program.

*(II)* HHSC will exclude charges and payments for:

(-a-) claims for [~~Charges associated with~~] services not covered by Medicaid, including:

(-1-) [~~as well as charges associated with~~] claims for the Children's Health Insurance Program; and

(-2-) inpatient claims associated with [~~or~~] the Women's Health Program; and

(-b-) [~~Charges associated with~~] claims submitted after the 95-day filing deadline.

*(ii)* Upon receipt of the requested data from the Medicaid contractors, HHSC will review the information for accuracy and make additional adjustments as necessary.

*(iii)* HHSC will convert the Medicaid charges to Medicaid costs using the ratio of cost-to-charges (inpatient and outpatient) as calculated under paragraph (3) of this subsection.

*(iv)* HHSC will subtract each hospital's Medicaid payments, including cost report settlements, supplemental payments (including upper payment limit payments) and graduate medical education payments, from its Medicaid costs. [~~For purposes of calculating the interim hospital-specific limit for non-state hospitals, supplemental payments received under the Upper Payment Limit program are not included in the hospital's Medicaid payments.~~]

*(v)* If a hospital's payments are less than its costs, the hospital has a positive Medicaid shortfall. If a hospital's payments are greater than its costs, the hospital has a negative Medicaid shortfall. A negative Medicaid shortfall will still be used in the calculation in paragraph (1) of this subsection.

*(vi)* HHSC may apply an adjustment factor to Medicaid [~~inpatient~~] payment data to more accurately approximate the Medicaid shortfall following a rebasing or other change in reimbursement rate under other sections [~~§355.8052~~] of this division [~~(relating to Inpatient Hospital Reimbursement)~~].

(C) Inflation adjustment.

*(i)* HHSC will trend each hospital's interim hospital-specific limit using the inflation update factor as defined in subsection (b)[~~(17)~~] of this section.

*(ii)* HHSC will use the inflation update factors for the period beginning at the midpoint of each DSH data year to the midpoint of the DSH program year.

*(iii)* HHSC will multiply each hospital's sum of the net uninsured costs and Medicaid shortfall by the inflation update factor to obtain its interim hospital-specific limit.

(3) Ratio of cost-to-charges. HHSC will calculate the ratio of cost-to-charges used in setting hospital-specific limits in conformity with the following conditions and procedures:

(A) HHSC will convert to cost the portion of the total Medicaid charges related to adjudicated claims that are allocated to the various cost centers of the hospital. The ratio is derived by allocating allowable charges to each cost center. [~~the total Medicaid charges related to adjudicated claims for each hospital to cost, utilizing a calculated ratio of cost-to-charges (inpatient and outpatient). The ratio is the total allowable costs divided by the total allowable charges, as described in subparagraph (C) of this paragraph.~~]

(B) HHSC will calculate the ratio of cost-to-charges for the respective cost centers using information from the appropriate worksheets of the hospital's Medicaid cost report or reports corresponding to the DSH data year [~~using information from the hospital's Medicaid cost report or reports corresponding to the DSH data year~~]. In the absence of a Medicaid cost report for that period, the hospital [~~HHSC~~] will submit the necessary information from [~~use~~] the latest available submitted Medicaid cost report or reports.

(C) The hospital must report in its DSH application [~~To determine the ratio of cost-to-charges (inpatient and outpatient) for each hospital, HHSC will divide the costs reported on the Medicaid cost report, Worksheet B, Part 1, by the total charges reported on Worksheet C, Part 1. HHSC will exclude~~] those costs and charges for nonhospital services such as ambulance, rural health clinics, primary home care, home health agencies, hospice, and skilled nursing facilities. HHSC will exclude the nonhospital services from the calculation under this subparagraph.

(4) Final hospital-specific limit.

(A) HHSC will calculate the individual components of a hospital's final hospital-specific limit using the calculation set out in paragraphs (2) and (3) of this subsection, except that[~~:~~]

*[~~(i)~~]* HHSC will use the hospital's actual costs incurred and payments received during the DSH program year.

*[~~(ii)~~* ~~HHSC will include supplemental payments made under the Upper Payment Limit program in the computation of each hospital's Medicaid shortfall.~~]

*[~~(iii)~~* ~~HHSC will use the actual ratio of cost-to-charges for the DSH program year for each hospital.~~]

(B) The final hospital-specific limit will be calculated at the time of the audit [~~used in the audit~~] conducted under subsection (o) of this section.

(g) Distribution of available DSH funds. DSH payments are subject to the availability of appropriated state and federal funds. Before the start of each DSH program year, CMS publishes the federal DSH allotment for each state. Based on CMS's DSH allotment for Texas, and subject to appropriated state funds and other factors, HHSC will determine the total amount of DSH funds that will be available for distribution to eligible qualifying DSH hospitals during the DSH program year. HHSC will distribute the available DSH funds among such hospitals using the following priorities:

(1) State-owned teaching hospitals and state chest hospitals. HHSC may reimburse state-owned teaching hospitals and state chest hospitals an amount less than or equal to their interim hospital-specific limits.

(2) IMDs.

(A) [~~Limits.~~] Aggregate payments made to IMD facilities statewide are subject to federally mandated reimbursement limits for IMD facilities.

(B) An IMD that satisfies the DSH requirements will receive 100 percent of its interim hospital-specific limit within the limits described in subparagraph (A) of this paragraph. If sufficient DSH funds for IMDs are not available to fully fund all IMDs to their interim hospital-specific limits, HHSC will pay all IMDs proportionately based on each IMD's percentage of the total interim hospital-specific limit for all IMDs.

[~~(B) State IMDs. HHSC may reimburse a state-owned or state-operated IMD an amount less than or equal to its interim hospital-specific limit.~~]

[~~(C) Non-state IMDs. A non-state IMD is reimbursed as other non-state hospitals as described in subsection (h)(2) of this section.~~]

[~~(D) Amount. A non-state IMD that satisfies the DSH requirements and provides inpatient psychiatric services receives up to 100 percent of its interim hospital-specific limit within available DSH funds. If sufficient DSH funds are not available to fully fund interim hospital-specific limits, each hospital's funding is adjusted pro rata within the DSH funds available under federal law as described in subparagraph (A) of this paragraph.~~]

(3) Other non-state hospitals. HHSC distributes the remaining DSH funds, if any, to other qualifying hospitals. The available DSH funds for the remaining hospitals equal the lesser of the funds remaining in the state's annual disproportionate share allotment or the sum of qualifying hospitals' interim hospital-specific limits.

(h) DSH payment calculation and frequency.

(1) Medicaid data verification.

(A) On or about April 15 of each year, HHSC will make available upon request for [~~send~~] each Medicaid participating hospital a report of the hospital's adjudicated data received from Medicaid contractors reflecting the hospital's Medicaid days, Medicaid charges, and Medicaid payments during the DSH data year.

(B) A hospital must communicate directly with the appropriate Medicaid contractors to request correction of any data the hospital believes is inaccurate or incomplete.

(C) Each Medicaid contractor will submit a final report to HHSC by July 15 of each year or a date specified by HHSC, which will include all agreed-upon corrections resulting from requests submitted by hospitals. Unless a hospital contacts HHSC pursuant to subparagraph (D) of this paragraph, HHSC will use the corrected report for DSH calculations described in this rule.

(D) At a hospital's request, HHSC will review instances in which a hospital and a Medicaid contractor cannot resolve disputes concerning data included in or excluded from the final report. HHSC will make the final determination in such a case and notify the hospital of the final determination.

(E) A hospital's right to request a review of eligibility, qualification, and estimated payment amount is addressed in subsection (j) of this section.

(2) Payment calculation for non-state hospitals. HHSC will calculate payments for a non-state hospital in the following manner unless the hospital's proposed reimbursement would exceed its interim hospital-specific limit. Payments will be made based on total Medicaid inpatient days as defined in subsection (b)[~~(40)(B)~~] of this section and low-income days, both of which have been weighted by the factors described in subparagraph (C) of this paragraph.

(A) Total Medicaid inpatient days. HHSC will base each hospital's total Medicaid inpatient days on the data reported by HHSC's Medicaid contractors for the relevant DSH data year.

(B) Low-income days. HHSC will calculate low-income days by multiplying a hospital's total inpatient census days for the DSH data year by its low-income utilization rate.

(C) Weighting factors. All MSA population data which are used to determine the weighting factors are from the most recent decennial census.

*(i)* Children's hospitals are weighted at 2.50 [~~1.25~~] because of the special nature of the services they provide.

*(ii)* Hospitals with more than 250 licensed beds, associated with hospital districts in the state's largest MSAs, will receive weights based proportionally on the MSA population. The specific weights for these hospitals are as follows:

*(I)* MSAs with populations greater than or equal to 137,000 [~~121,000~~] and less than 300,000 are weighted at 2.5.

*(II)* MSAs with populations greater than or equal to 300,000 and less than 1,000,000 are weighted at 2.75.

*(III)* MSAs with populations greater than or equal to 1,000,000 and less than 3,000,000 are weighted at 3.0.

*(IV)* MSAs with populations greater than or equal to 3,000,000 are weighted at 3.5.

*(iii)* The weighting factor for all other hospitals is 1.0.

*(iv)* HHSC may change the weights as needed in the DSH program to address changes in program size.

(D) Allocation of DSH funds to non-state urban and rural hospitals.

*(i)* HHSC will divide the amount determined in subsection (g)(3) of this section into two parts:

*(I)* One-half of the funds will reimburse each qualifying hospital by its percent of the aggregate total Medicaid inpatient days.

*(II)* One-half of the funds will reimburse each qualifying hospital by its percent of low income days.

*(ii)* After applying clause (i) of this subparagraph, HHSC will test to determine whether qualifying hospitals in rural areas will receive 5.5 percent or more of the funds determined in subsection (g)(3) of this section.

*(I)* If hospitals in rural areas receive at least 5.5 percent of the funds, HHSC will reimburse them as calculated in clause (i) of this subparagraph.

*(II)* If hospitals in rural areas will not receive at least 5.5 percent of the funds, HHSC will allocate 5.5 percent of the funds in subsection (g)(3) of this section for reimbursement of such hospitals. After the reallocation of funds to meet the 5.5 percent test, HHSC will determine payment amounts to each urban and rural hospital, as described in clause (i) of this subparagraph.

(3) DSH distribution methodology for non-state hospitals.

(A) HHSC will calculate the number of weighted total Medicaid inpatient days and weighted low-income days for each qualifying hospital as described in paragraph (2) of this subsection.

(B) Using the results obtained under subparagraph (A) of this paragraph, HHSC will calculate each qualifying hospital's annual DSH payment based on the following formula: ((1/2 x Available DSH funds) x ((Hospital's Medicaid Days x Weight)/(Total Weighted Medicaid Days))) + ((1/2 x Available DSH funds) x ((Hospital's Low Income Days x Weight)/(Total Weighted Low Income Days))) [~~Figure: 1 TAC §355.8065(h)(3)(B)~~]

(C) HHSC will compare the projected payment for each qualifying hospital with its interim hospital-specific limit. If the hospital's projected payment is greater than its interim hospital-specific limit, HHSC will reduce the hospital's payment to its interim hospital-specific limit.

(D) If there are funds remaining out of the total available DSH funds because some hospitals have had their DSH payments reduced to their interim hospital-specific limits, HHSC will distribute the excess funds to qualifying hospitals that had projected payments below their interim hospital-specific limits as follows. HHSC will:

*(i)* Calculate the difference between a hospital's interim hospital-specific limit and its projected DSH payment;

*(ii)* Add all of the differences from clause (i) of this subparagraph;

*(iii)* Calculate a ratio for each hospital by dividing the difference from clause (i) of this subparagraph by the sum from clause (ii) of this subparagraph; and

*(iv)* Multiply the ratio from clause (iii) of this subparagraph by the remaining available DSH funds.

(E) Each hospital's total DSH payment (including the redistribution of excess funds) may not exceed its interim hospital-specific limit.

(4) Payment Frequency. HHSC may reimburse DSH qualifying hospitals on a monthly basis. Monthly payments equal one-twelfth of annual payments unless it is necessary to adjust the amount because payments are not made for a full 12-month period, to comply with the annual state disproportionate share hospital allotment, or to comply with other state or federal disproportionate share hospital program requirements.

(5) Reallocating funds if hospital closes, loses [~~looses~~] its license or eligibility. If a hospital that is receiving DSH funds closes,

loses its license, or loses its Medicare or Medicaid eligibility during a DSH program year, HHSC will reallocate that hospital's disproportionate share funds going forward among all DSH providers that are eligible for additional payments.

(i) Hospital located in a federal natural disaster area. A hospital that is located in a county that is declared a federal natural disaster area and that was participating in the DSH program at the time of the natural disaster may request that HHSC determine its DSH qualification and interim reimbursement payment amount under this subsection for subsequent DSH program years. The following conditions and procedures will apply to all such requests received by HHSC:

(1) The hospital must submit its request in writing to HHSC with its annual DSH application.

(2) If HHSC approves the request, HHSC will determine the hospital's DSH qualification using the hospital's data from the DSH data year prior to the natural disaster. However, HHSC will calculate the one percent Medicaid minimum utilization rate, the interim hospital-specific limit, and the payment amount using data from the DSH data year. The final hospital-specific limit will be computed based on the actual data for the DSH program year.

(3) HHSC will notify the hospital of the qualification and interim reimbursement [~~payment determinations~~].

~~[(4) A hospital may request an administrative review of HHSC's qualification and payment determinations. The review will be conducted under the provisions of subsection (j) of this section.]~~

(j) Review of HHSC determination of eligibility, qualification, and estimated payment amount.

(1) Prior to the first payment of the DSH program year, HHSC will notify each hospital that applied to participate in the DSH program whether it is eligible and qualified to participate. An eligible hospital will be notified of its estimated annual DSH payment amount.

(2) A hospital that either does not qualify or disputes the payment amount may request a review by HHSC in accordance with paragraph (3) of this subsection. Initial qualification determinations and estimated payment amounts for all hospitals may change depending on the outcome of the review.

(3) Except as specified in paragraph (6) of this subsection, a request for review must be submitted in writing to HHSC within 15 calendar days of the date the hospital received the notification under this subsection.

(A) The written request for review and all supporting documentation must be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department.

(B) The request must allege the specific factual or calculation errors the hospital contends HHSC made that, if corrected, would result in the hospital's qualifying for payments or receiving a more accurate payment amount.

(C) A hospital may not base a request for review on a claim that the data the hospital or a Medicaid contractor submitted to HHSC is incorrect or incomplete unless such incorrect or incomplete data would result in an inappropriate qualification or payment to the hospital.

*(i)* The hospital will have an opportunity to resolve disputed data with the Medicaid contractor under subsection (h)(1) of this section.

*(ii)* HHSC may require supporting documentation when a hospital requests a review based on data submitted with and certified in a hospital's original DSH application.

*(iii)* HHSC may require an independent third party audit of the revised data to be paid for by the hospital requesting the review. The audit must be performed within the time frame determined by HHSC.

(D) The request may not dispute HHSC's eligibility, qualification, or payment methodologies.

(E) Within 30 calendar days of the date of the notification, the hospital must submit documentation supporting its allegations.

(4) The review is:

(A) limited to the hospital's allegations of factual or calculation errors;

(B) supported by documentation submitted by the hospital or used by HHSC in making its original determination;

(C) solely a data review; and

(D) not an adversarial hearing.

(5) HHSC will notify the hospital of the results of the review.

(6) HHSC will not consider requests for review submitted after the deadline specified in paragraph (3) of this subsection unless HHSC subsequently notifies a hospital that it no longer qualifies for DSH funding. In that case, the hospital may request a review in accordance with paragraph (3) of this subsection.

(k) Disproportionate share funds held in reserve.

(1) If HHSC has reason to believe that a hospital is not in compliance with the conditions of participation listed in subsection (e) of this section, HHSC will notify the hospital of possible noncompliance. Upon receipt of such notice, the hospital will have 30 calendar days to demonstrate compliance.

(2) If the hospital demonstrates compliance within 30 calendar days, HHSC will not hold the hospital's DSH payments in reserve.

(3) If the hospital fails to demonstrate compliance within 30 calendar days, HHSC will notify the hospital that HHSC is holding the hospital's DSH payments in reserve. HHSC will release the funds corresponding to any period for which a hospital subsequently demonstrates that it was in compliance. HHSC will not make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(1) and (2) of this section. HHSC may choose not to make DSH payments for any period in which the hospital is out of compliance with the conditions of participation listed in subsection (e)(3) - (7) of this section.

(4) If a hospital's DSH payments are being held in reserve on the date of the last payment in the DSH program year, and no request for review is pending under paragraph (5) of this subsection, the amount of the payments is not restored to the hospital, but is divided proportionately among the hospitals receiving a last payment.

(5) Hospitals that have DSH payments held in reserve may request a review by HHSC.

(A) The hospital's written request for a review must:

*(i)* be sent to HHSC's Director of Hospital Reimbursement, Rate Analysis Department;

*(ii)* be received by HHSC within 15 calendar days after notification that the hospital's DSH payments are held in reserve; and

*(iii)* contain specific documentation supporting its contention that it is in compliance with the conditions of participation.

(B) The review is:

*(i)* limited to allegations of noncompliance with conditions of participation;

*(ii)* limited to a review of documentation submitted by the hospital or used by HHSC in making its original determination; and

*(iii)* not conducted as an adversarial hearing.

(C) HHSC will conduct the review and notify the hospital requesting the review of the results.

(l) Recovery of DSH funds. Notwithstanding any other provision of this section, HHSC will recoup any overpayment of DSH funds made to a hospital, including an overpayment that results from HHSC error or that is identified in an audit. Recovered [~~These~~] funds will be redistributed proportionately to DSH providers that are eligible for additional payments.

(m) Failure to provide supporting documentation. HHSC will exclude data from DSH calculations under this section if a hospital fails to maintain and provide adequate documentation to support that data.

(n) Voluntary withdrawal from the DSH program.

(1) HHSC will recoup all DSH payments made during the same DSH program year to a hospital that voluntarily terminates its participation in the DSH program. HHSC will redistribute the recouped funds according to the distribution methodology described in this section to DSH providers eligible for additional payments.

(2) A hospital that voluntarily terminates from the DSH program will be ineligible to receive payments for the next DSH program year after the hospital's termination.

(3) If a hospital does not apply for DSH funding in the DSH program year following a DSH program year in which it received DSH funding, even though it would have qualified for DSH funding in that year, the hospital will be ineligible to receive payments for the next DSH program year after the year in which it did not apply.

(4) The hospital may reapply to receive DSH payments in the second DSH program year after the year in which it did not apply.

(o) Audit process.

(1) Independent certified audit. HHSC is required by the Social Security Act (Act) to annually complete an independent certified audit of each hospital participating in the DSH program in Texas. Audits will comply with all applicable federal law and directives, including the Act, the Omnibus Budget and Reconciliation Act of 1993 (OBRA '93), the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA), pertinent federal rules, and any amendments to such provisions.

(A) Each audit report will contain the verifications set forth in 42 CFR §455.304(d).

(B) The sources of data utilized by HHSC, the hospitals, and the independent auditors to complete the DSH audit and report include:

*(i)* The Medicaid cost report;

*(ii)* Medicaid Management Information System data; and

*(iii)* Hospital financial statements and other auditable hospital accounting records.

(C) A hospital must provide HHSC or the independent auditor with the necessary information in the time specified by HHSC or the independent auditor. A complete, detailed listing of all information required by the independent auditor is available on HHSC's website.

(D) A hospital that fails to provide requested information or to otherwise comply with the independent certified audit requirements may be subject to a withholding of Medicaid disproportionate share payments or other appropriate sanctions.

(E) HHSC will recoup any overpayment of DSH funds made to a hospital that is identified in the independent certified audit and will redistribute the recouped funds proportionately to DSH providers that are eligible for additional payments subject to their final hospital-specific limits.

(F) Review of preliminary audit finding of overpayment.

*(i)* Before finalizing the audit, HHSC will notify each hospital that has a preliminary audit finding of overpayment.

*(ii)* A hospital that disputes the finding or the amount of the overpayment may request a review in accordance with the following procedures.

*(I)* A request for review must be received by HHSC's Director of Hospital Reimbursement, Rate Analysis Department, in writing by regular mail, hand delivery or special mail delivery, from the hospital within 30 calendar days of the date the hospital receives the notification described in clause (i) of this subparagraph.

*(II)* The request must allege the specific factual or calculation errors the hospital contends the auditors made that, if corrected, would change the preliminary audit finding.

*(III)* All documentation supporting the request for review must accompany the written request for review or the request will be denied.

*(IV)* The request for review may not dispute the federal audit requirements or the audit methodologies.

*(iii)* The review is:

*(I)* limited to the hospital's allegations of factual or calculation errors;

*(II)* solely a data review based on documentation submitted by the hospital with its request for review or that was used by the auditors in making the preliminary finding; and

*(III)* not an adversarial hearing.

*(iv)* HHSC will submit to the auditors all requests for review that meet the procedural requirements described in clause (ii) of this subparagraph.

*(I)* If the auditors agree that a factual or calculation error occurred and change the preliminary audit finding, HHSC will notify the hospital of the revised finding.

*(II)* If the auditors do not agree that a factual or calculation error occurred and do not change the preliminary audit finding, HHSC will notify the hospital that the preliminary finding stands and will initiate recoupment proceedings as described in this section.

~~[(F) HHSC may recover from audited non-state hospitals the costs of audits that are required by federal law.]~~

(2) Additional audits. HHSC may conduct or require additional audits.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 29, 2011.

TRD-201102471
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 424-6900

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## DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT)

### 1 TAC §355.8441

The Texas Health and Human Services Commission (HHSC) proposes to amend §355.8441, concerning Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services.

Background and Justification

The proposed amendment allows publicly owned mobile dental units and clinics to receive additional federal funding through supplemental payments for Medicaid fee-for-service dental claims.

Upon state plan approval by the Centers for Medicare and Medicaid Services, HHSC can establish a supplemental payment program for dental services provided by any publicly owned dental facility. This program will allow for the claiming of federal funds based on the difference between the Medicaid dental rate and the dental rate of the selected commercial dental insurance carrier utilized by the provider. HHSC would use commercial rates in lieu of Medicare rates as a comparison because there is no Medicare dental program with which to compare. The program will be for Medicaid fee-for-service claims. The funding for the state share of supplemental payments is limited to and obtained through intergovernmental transfers of funds from the governmental entity that owns the dental provider.

In addition, HHSC is eliminating language that states that dental fees will be reviewed at least every two years. This language is being eliminated to bring the rule in line with current HHSC practice, as dental fees are not currently reviewed under that schedule.

Section-by-Section Summary

The proposed amendment to §355.8441 restructures paragraph (10), concerning dental services, into an introduction and three subparagraphs.

Language regarding the review of dental fees at least every two years is removed from paragraph (10).

New language is added in paragraph (10)(C) to describe the methodology for calculating the supplemental payment and how the payment is reimbursed.

Fiscal Note

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the proposed amendment is in effect there will be a fiscal impact to state government. There will be estimated revenue increases of $285,237 for state fiscal year (FY) 2012; $293,584 for FY 2013; $308,006 for FY2014; $323,182 for FY2015; $339,060 for FY 2016 and $355,405 for FY 2017. This fiscal impact reflects an increase of revenue in the receipt of federal matching funds resulting from settlement and the corresponding supplemental payment. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Carolyn Pratt, Director of Rate Analysis, has determined that there will be no effect on small businesses or micro-businesses as a result of enforcing or administering the proposed amendment. Providers will not be required to alter their business practices as a result of the rule. There are no significant costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Ms. Pratt has also determined that for each year of the first five years the proposed amendment is in effect, the public will benefit by the adoption of this rule by providing a methodology for increasing federal funds for publicly-owned dental providers to benefit Medicaid recipients.

Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Reuben Leslie, Lead Analyst, Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, MC-H400, Austin, Texas 78708-5200; by fax to (512) 491-1998; or by e-mail to reuben.leslie@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code

§32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The amendment affects the Texas Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

*§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Services.*

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) program, delivered only to Medicaid clients under age 21, also known as Texas Health Steps (THSteps) and the THSteps Comprehensive Care Program (CCP). Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) Counseling and psychotherapy services are reimbursed to freestanding psychiatric facilities in accordance with §355.8060 of this subchapter (relating to Reimbursement Methodology for Freestanding Psychiatric Facilities).

(2) Durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) are reimbursed in the same manner as DMEPOS under home health services at §355.8021(b) of this subchapter (relating to Reimbursement Methodology for Home Health Services and Durable Medical Equipment, Prosthetics, Orthotics and Supplies).

(3) Nursing services, including, but not limited to, private duty nursing, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nursing, and nursing assessment services, are reimbursed the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows:

(A) Independently enrolled RNs and LVNs/LPNs, under §355.8085 of this subchapter (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners); and

(B) Home health agencies (HHAs), under §355.8021(a) of this subchapter.

(4) Physical therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, Psychologists' Services, Licensed Psychological Associates' Services, Maternity Clinic Services, and Tuberculosis Clinic Services);

(B) HHAs, under §355.8021(a) of this subchapter;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), under §355.8085 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter (relating to Payment for Hospital Services).

(5) Occupational therapy services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter;

(B) HHAs, under §355.8021(a) of this subchapter;

(C) CORFs and ORFs, under §355.8085 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(6) Speech-language pathology services are reimbursed in accordance with the Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, under §355.8081 of this subchapter;

(B) HHAs, under §355.8021(a) of this subchapter;

(C) CORFs and ORFs, under §355.8085 of this subchapter;

(D) freestanding psychiatric facilities, under §355.8060 of this subchapter; and

(E) outpatient hospitals, under §355.8061 of this subchapter.

(7) Nutritional services provided by licensed dietitians are reimbursed the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(8) Providers are reimbursed for the administration of immunizations the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this subchapter.

(9) Vaccines not covered elsewhere are reimbursed the lesser of the provider's billed charges or the actual cost of the vaccine.

(10) Dental services are reimbursed in accordance with the following Medicaid reimbursement methodologies:

(A) Dental services provided by enrolled dental providers [~~independently enrolled dentists~~] are reimbursed in accordance with §355.8081 of this subchapter. The fees are calculated as access-based fees under §355.8085 of this subchapter and are based on a percentage of the billed charges (i.e., the usual-and-customary amount providers charge non-Medicaid clients for similar services) reported on Medicaid dental claims for each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service. [~~The fees are reviewed at least every two years.~~]

(B) Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this subchapter (relating to Federally Qualified Health Center Services Reimbursement).

(C) Publicly owned dental providers may be eligible to receive supplemental payments for fee-for-service dental claims.

HHSC will calculate supplemental payments using the following methodology:

*(i)* HHSC will select a commercial dental insurance carrier fee schedule that is utilized by the provider.

*(ii)* For adjudicated claims, the maximum amount of supplemental payment an eligible dental provider may receive is calculated as the difference between the HHSC approved reimbursement amount from the Medicaid fee-for-service dental fee schedule and the corresponding reimbursement on the dental insurance carrier fee schedule selected in clause (i) of this subparagraph for the same procedure. The supplemental payment is calculated quarterly after the end of each federal fiscal quarter. The supplemental payment is contingent on receipt of funds as specified in clause (iii) of this subparagraph.

*(iii)* The funding for the state share of supplemental payments to a dental provider is limited to and obtained through intergovernmental transfers of funds from the governmental entity that owns and operates the dental provider. An intergovernmental transfer that is not received in the manner and by the date specified by HHSC may not be accepted.

*(iv)* If a supplemental payment results in an overpayment or if the federal government disallows federal financial participation related to the receipt or use of supplemental payments under this section, HHSC may recoup an amount equal to the federal share of supplemental payments overpaid or disallowed. To satisfy the amount owed, HHSC may recoup from any current or future Medicaid payments.

(11) Personal care services (PCS) are reimbursed in accordance with the following Medicaid reimbursement methodologies for the applicable provider type:

(A) School districts delivering PCS under School Health and Related Services (SHARS) are reimbursed in accordance with §355.8443 of this division (relating to Reimbursement Methodology for School Health and Related Services (SHARS)); and

(B) Providers other than school districts delivering PCS are reimbursed as follows:

*(i)* PCS and PCS delivered in conjunction with delegated nursing services are reimbursed fees determined by HHSC or its designee. The fees are determined using at least one of the following methods: a review of rates paid to providers delivering similar services; modeling using an analysis of other data available to HHSC; or a combination thereof, as determined appropriate by HHSC.

*(ii)* PCS delivered through the Consumer Directed Services payment option are reimbursed in accordance with §355.114 of this chapter (relating to Consumer Directed Services Payment Option).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102475
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 424-6900

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

## CHAPTER 2. TEXAS BOOTSTRAP LOAN PROGRAM

### 10 TAC §§2.2, 2.4, 2.5, 2.7 - 2.13

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 2, §§2.2, 2.4, 2.5, and 2.7 - 2.13, concerning the Texas Bootstrap Loan Program. The amendments are proposed in order to include changes from Senate Bill 992, which was approved during the 82nd Legislative Session, and also reflect staff's recommendations of necessary policy and administrative changes to further enhance and streamline operations.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Irvine has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be more clarity and certainty in the requirements of the Texas Bootstrap Loan Programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The proposed amendments will not impact local employment.

The public comment period will be held July 15, 2011 to August 5, 2011 to receive input on the proposed amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 5, 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed amendments.

*§2.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Activity--A form of assistance by which Texas Bootstrap Loan Program funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, existing new construction, reconstruction, or [~~and~~] rehabilitation of residential housing.

(2) Administrative Deficiencies--The absence of information or a document from the Owner-Builder application as required by these rules and Program Manual.

(3) Amortized--A loan in which the principal as well as the interest, if applicable, is payable monthly or in some other periodic installment over the term of the loan.

(4) Board--The governing board of the Texas Department of Housing and Community Affairs.

(5) Colonia--A geographic area located in a county some part of which is within one-hundred fifty (150) miles of the international border of this state that:

(A) has a majority population composed of individuals and families of low income and very low income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code; or

(B) has the physical and economic characteristics of a Colonia, as determined by the Department.

(6) Colonia Self-Help Center--As defined under Chapter 2306, Subchapter Z of the Texas Government Code.

(7) Committed--Funds reserved for an Owner-Builder and approved by the Department.

(8) Competitive Application Cycle--A defined deadline by which Applications must be submitted according to a published NOFA. Competitive Applications will be reviewed for scoring criteria in accordance with the rules, and the NOFA.

(9) [~~(8)~~] Department--The Texas Department of Housing and Community Affairs.

(10) [~~(9)~~] Development--Projects that have a construction component, either in the form of new construction or the rehabilitation of single family residential housing that meet the Texas Bootstrap Loan Program requirements.

(11) Domestic Farm Laborer--Individuals (and the family) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(12) [~~(10)~~] Drawn--Funds approved by the Department and disbursed to the Nonprofit Owner-Builder Housing Provider (NOHP).

(13) Forgivable Loan--Loans which the lender undertakes to waive repayment of under certain prescribed conditions.

[~~(11) Economically Distressed Area--A county that contains an area that meets the criteria for an economically distressed area under §17.92(1), Texas Water Code; and has adopted and enforces the model rules under §16.343, Texas Water Code.~~]

(14) [~~(12)~~] Grant--Financial assistance that is awarded in the form of money [~~to a housing sponsor~~] for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(15) [~~(13)~~] HUD--United States Department of Housing and Urban Development.

(16) [~~(14)~~] Life of Loan Flood Certification--Life of Loan Flood Certification tracks the flood zone of the property for the life of the loan.

(17) [~~(15)~~] Loan Origination Agreement--A written agreement, including all amendments thereto between the Department and the Nonprofit Owner-Builder Housing Provider (NOHP), that authorizes the NOHP to originate certain loans under the Texas Bootstrap Loan Program.

(18) [~~(16)~~] New Construction--Any single-family structure not meeting the definition of Rehabilitation or Reconstruction.

(19) [~~(17)~~] NOFA--Notice of Funding Availability.

(20) [~~(18)~~] NOHP--Nonprofit Owner-Builder Housing Provider.

(21) [~~(19)~~] Nonprofit Organization--An organization that:

(A) is organized under state or local laws;

(B) has no part of its net earnings benefiting any member, founder, contributor, or individual;

(C) has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the Application and must continue to be effective throughout the length of any contract agreements; or classification as a subordinate of a central organization nonprofit under §501(c)(3) of the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(D) has a pending application for §501(c)(3) status cannot be used to comply with the tax status requirement.

(22) [~~(20)~~] Open Reservation Cycle--A defined period during which an NOHP may submit Owner-Builder applications according to a published NOFA and which will be reviewed on a first come-first serve basis until all funds available are committed, or until the NOFA is closed. Owner-Builder applications will be reviewed in accordance with Program rules and the Program Manual. The Department may release funds in a two (2) year funding cycle or less than two (2) years.

(23) [~~(21)~~] Owner-Builder--A person, other than a person who owns or operates a construction business and who owns or purchases a piece of real property through a warranty deed and deed of trust; or is purchasing a piece of real property under a contract for deed entered into before January 1, 1999; and who undertakes to make improvements to that property.

(24) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in collateral.

(25) [~~(22)~~] Participant--An organization which submits an application to the Department to be certified as an NOHP.

(26) [~~(23)~~] Program--Texas Bootstrap Loan Program also know as the Owner-Builder Loan Program.

(27) [~~(24)~~] Program Manual--A set of guidelines designed to be an implementation tool for the NOHP that has executed a Loan Origination Agreement and allows the NOHP to search for terms, statutes, regulations, forms and attachments. The Program Manual is developed by the Department and amended or supplemented from time-to-time.

(28) [~~(25)~~] Reconstruction--The rebuilding of a new single-family structure on the same lot where housing exists at the time of Owner-Builder loan application. Texas Bootstrap Loan Program funds may also be used to build a new foundation or repair an existing foundation.

(29) [~~(26)~~] Rehabilitation--Includes the alteration, improvement or modification of an existing single family structure. It may also include moving an existing single family structure to a foundation constructed with Texas Bootstrap Loan Program funds.

[~~(27) Related Party--As defined in §2306.6702 of the Texas Government Code.~~]

(30) [~~(28)~~] Reservation--An amount of funds set-aside for each individual Owner-Builder applicant registered into the Department's Texas Bootstrap Loan Program Registration website.

(31) [~~(29)~~] Self-Help Housing Construction--The self-help housing process enables Owner-Builders to rehabilitate, reconstruct or construct their own homes, usually working together in groups on other eligible Owner-Builder's houses at the same time. Owner-Builders use their own "sweat equity" to reduce the cost of their homes.

(32) [~~(30)~~] Single family structure--A property designed and built to support the habitation of one person or one household may include an attached or detached unit.

(33) [~~(31)~~] Very Low-Income Families--Owner-Builders who do not have an annual income that exceeds 60% of the greater of the state or local median family income, as determined by the Department, when combined with the income of any person who resides with the Owner-Builder.

*§2.4. Participant Requirements.*

(a) Eligible Participants. The following organizations or entities are eligible to participate in the Texas Bootstrap Loan Program:

(1) Colonia Self Help Centers established under Chapter 2306, Subchapter Z of the Texas Government Code; or

(2) Nonprofit Owner-Builder Housing Provider (NOHP) certified by the Department pursuant to §2306.755 of the Texas Government Code.

(b) Ineligible Participants. The following violations may cause a Participant, and any applications they have submitted, to be ineligible:

(1) Previously funded Participant(s) who have been partially or fully deobligated due to failure to meet contractual obligations during twelve (12) month period prior to the NOFA published date;

(2) Participants who have not satisfied all eligibility requirements described in the Program rules and NOFA to which they are responding;

(3) Participants that have failed to make timely payment on fee commitments or on debt instruments held by the Department and for which the Department has initiated formal collection actions;

(4) Participants that have been debarred by HUD or the Department; or

(5) Participants whose staff violates the state's revolving door policy.

(c) Noncompliance. Each Participant will be reviewed for its compliance history by the Department. Participants found to be in material noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(d) Eligibility requirements. Participant must be certified as an NOHP or must be a Colonia Self-Help Center and must have entered into a Loan Origination Agreement with the Department in order to be eligible to participate in the Texas Bootstrap Loan Program [~~Reservation system~~] and as more fully described in the NOFA. The Participant must have the capacity to administer and manage resources as evidence by previous experience of managing state and/or federal programs.

(e) If indicated by the Department, comply with all requirements to utilize the Department's website to provide necessary data to the Department.

*§2.5. Program Activities.*

Texas Bootstrap Loan Program funds may be used to finance affordable housing and promote homeownership through acquisition, existing, new construction, reconstruction, or rehabilitation of residential housing. All eligible Participants that satisfy the requirements of §2.4 of this chapter (relating to Participant Requirements) may reserve funds and submit a loan application on behalf of an Owner-Builder applicant for the Texas Bootstrap Loan Program.

*§2.7. Distribution of Funds.*

(a) Set-Asides. In accordance with §2306.753(d) of the Texas Government Code, at least two-thirds (2/3) of the dollar amount of loans made under this chapter in each fiscal year must be made to Owner-Builders whose property is located in a census tract that has a median household income that is not greater than 75 percent of the median state household income for the most recent year for which statistics are available [~~in a county that is eligible to receive financial assistance under Chapter 17, Subchapter K of the Texas Water Code~~].

(b) Balance of State. The remaining one-third (1/3) of the dollar amount of loans may be made to Owner-Builders statewide [~~in either a county under subsection (a) of this section or a county not eligible to receive financial assistance under Chapter 17, Subchapter K of the Texas Water Code~~].

(c) Reservation procedures. Reservations of funds are available to the NOHP [~~Nonprofit Owner-Builder Housing Provider (NOHP)~~] on first-come, first-serve [~~first-served~~] basis. In all cases the NOHP must register each Owner-Builder applicant on the Department's Internet Loan [~~Texas Bootstrap Loan Program~~] Reservation system [~~via the Department's website~~]. Maximum Reservations allowed for an NOHP at any given time may not exceed $900,000 in total loan Reservations in the two-thirds set-aside as noted in §2306.753(d) of the Texas Government Code. The NOHP may not exceed $450,000 in total loan Reservations at any given time under the Balance of the State set-aside. The NOHP may enter additional Reservations after a loan has closed [~~and all required closing documents have been submitted to the Department for funding~~].

(d) A Reservation of funds with respect to the Program may be subject to cancellation if all documents required in the Program Manual are not submitted to the Department within ten (10) business days of the date the registration was entered into the Reservation system and/or if the performance benchmarks outlined in these Program rules are not adhered to. Registration of an Owner-Builder applicant does not guarantee funding.

(e) Modification of Loan Reservation. After a Reservation has been secured and the Owner-Builder applicant has been deemed eligible to participate in the Program, the NOHP must notify the Department of any changes to the Owner-Builder application, such as a cancellation, change in the sales price, or change in the loan amount. The NOHP will not be permitted to change, exchange, replace or switch Owner-Builder applicants once the loan has been registered; unless construction has commenced and one of the following events has occurred: death, illness, divorce, loss of income, nonperformance by Owner-Builder applicant or for other acceptable reasons, as approved by the Department, where the Owner-Builder applicant is unable to perform.

(f) Once a Reservation has been awarded, the Department may grant one forty-five (45) day extension of required benchmarks due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. If funds are available the NOHP may [~~In order to~~] receive another Reservation on the same Owner-Builder applicant and the NOHP must submit an updated application to ensure the Owner-Builder applicant still meets all guidelines and requirements under Texas Bootstrap Loan Program rules and Program Manual.

*§2.8. Criteria for Funding.*

(a) All Notices of Funding Availability (NOFA) will be presented to the Board for approval. The Department will publish a NOFA

in the *Texas Register* and on the Department's website. The NOFA may [~~will~~] be published as an Open Reservation Cycle or a Competitive Application Cycle. The NOFA will establish and define the terms and conditions for the submission of Reservations and/or applications. The Department may also set a deadline for receiving Reservations and/or applications. The NOFA will also indicate the approximate amount of available funds.The Department may increase the NOFA from time to time without republishing the NOFA in the *Texas Register* and Department's website.

(b) A nonprofit organization must have been certified by the Department as a Nonprofit Owner-Builder Housing Provider (NOHP) and must have executed a Loan Origination Agreement to be eligible to submit a Reservation on behalf of an Owner-Builder applicant. A Reservation containing false information will be disqualified [~~and/or all documents required in the Program Manual are not received within ten (10) business days after the Reservation has been entered into the system will be disqualified~~]. The Department staff will review and process all Owner-Builder applications in the order received. If the Department receives more than one Owner-Builder application on the same day the applications will be processed in the order entered into the Reservation system. The NOHP will be notified in writing of the Department's determination.

(c) Reservations received by the Department in response to a NOFA will be handled in the following manner:

(1) The Department will accept Reservations until [~~the~~] all funds under the NOFA have been committed. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a "received date" based on the date and time the Reservation was entered into the Texas Bootstrap Loan Program Reservation system. Each Reservation will be reviewed in accordance with the Program rules.

(3) Reservations and/or applications submitted on behalf of an Owner-Builder applicant must comply with all applicable Texas Bootstrap Loan Program requirements or regulations established in these rules. Reservations and/or applications submitted on behalf of an Owner-Builder applicant that do not comply with such requirements may [~~will~~] be disqualified. The NOHP will be notified in writing of any cancelled and/or disqualified Reservations and/or applications submitted on behalf of an Owner-Builder applicant.

(4) Administrative Deficiencies. If a Reservation contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Reservation, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction in a deficiency notice in the form of an email, facsimile or a telephone call to the NOHP advising that such a request has been transmitted. [~~An NOHP may not change or supplement a Reservation in any manner after submission, except in response to a direct request from the Department. The NOHP must submit the requested information to the Department within five (5) business days of notification of deficiency.~~]

(5) Prior to issuing an applicant eligibility letter the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has issued an applicant eligibility letter to the Owner-Builder applicant, but the NOHP and/or Owner-Builder applicant has not complied with all the Program rules and guidelines, the Department may suspend funding until the NOHP and/or Owner-Builder applicant has satisfied all requirements of the Program. If the NOHP is unable to cure any deficiencies within fifteen (15) days, the Department may provide a one-time fifteen (15) day extension or decline to fund the Reservation.

(6) In the event of a tie between two or more Reservations, the Department reserves the right to determine which Reservation will receive funding. The Department will give priority to Reservations to Owner-Builders with an annual income of less than $17,500 and Reservations to Owner-Builders who will reside in counties and municipalities that agree in writing to waive the capital recovery fees, building permit fee or other fees related to the building of the houses to be built with the loan proceeds. Tied Reservations may also receive a partial recommendation for funding.

(d) Alternative Dispute Resolution Policy. In accordance with §2306.082 of the Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution (ADR) procedures under the Governmental Dispute Resolution Act, Chapter 2009 of the Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR procedure at §1.17 of this title (relating to Alternative Dispute Resolution and Negotiated Rulemaking).

*§2.9. Program Administration.*

(a) Per household assistance from the Department for any Texas Bootstrap Loan Program loans may not exceed $45,000 per-household pursuant to §2306.754(b) of the Texas Government Code. The Owner-Builder must obtain the amount necessary that exceeds $45,000 from other sources of funds including other Department funds with the exception of funds being utilized to implement the Texas Bootstrap Loan Program. The total amount of Amortized repayable loans made by the Department and other entities to an Owner-Builder under the Program may not exceed $90,000 pursuant to §2306.754(b) of the Texas Government Code. [~~For purposes of this chapter, a Grant includes a forgivable loan.~~]

(b) A loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's loan is the largest Amortized, repayable loan secured by the real property; or

(c) The Department may accept a parity lien position if the original principal amount of the leveraged loan is equal to or greater than the Department's loan; or

(d) The Department may accept a subordinate lien position if the original principal amount of the leveraged loan is at least $1,000 or greater than the Department's loan. However liens related to other subsidized funds provided in the form of grants and nonamortizing loans, such as deferred payment or forgivable loans, must be subordinate to the Department's loan.

(e) The Department, through a Nonprofit Owner-Builder Housing Provider (NOHP), shall make loans for Owner-Builder applicants to enable them to:

(1) purchase or refinance real property on which to build new residential housing;

(2) build new residential housing; or

(3) improve existing residential housing.

(f) The NOHP will be granted a 6% administration fee upon completion of the house and closing of each mortgage loan.

(g) Loan Origination Agreement. Upon approval by the Department, the nonprofit organization certified as an NOHP or Colonia Self-Help Centers shall enter into, execute, and deliver to the Department the Loan Origination Agreement.

(h) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any Program written agreement provided that:

(1) Time extensions. The Executive Director may collectively provide up to one six (6) month extension to the end date of any Loan Origination Agreement. Any additional time extension granted by the Executive Director shall include a statement by the Executive Director relating to unusual, non-foreseeable or extenuating circumstances. If the extension is longer than six (6) months and the Executive Director determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Governing Board for approval, approval with modifications, or denial of the requested extension; and

(2) In the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department.

(i) Sanctions/Deobligation. The Department will apply its Administrative [~~Administration~~] Rules in Chapter 1 of this title.

(j) The Department may use all applicable provisions and/or any relevant rules to assure compliance with these rules or Loan Origination Agreement.

(k) Additional Funds. In the event the Department has additional funds in the same funding cycle, the Department, with Board approval, will distribute funds in accordance with §2.7(a) - (b) of this chapter (relating to Distribution of Funds).

(l) The Department may terminate the Loan Origination Agreement in whole or in part. If the NOHP has not achieved performance benchmarks as outlined in Loan Origination Agreement, Program rules and Manual. Performance benchmarks must be satisfactorily completed as follows:

(1) If the Owner-Builder applicant qualifies for the Program, the Department will issue an applicant eligibility letter (approval letter) which reserves the funds (up to $45,000 per Reservation) for twelve (12) months from the [~~Reservation~~] date of the applicant eligibility letter. Owner-Builder applicant will not be required to re-qualify for the Program if the Owner-Builder applicant closes on the loan on or before the expiration date stated on the applicant eligibility letter issued by the Department. If the Owner-Builder fails to close on the loan on or before the expiration date stated on the applicant eligibility letter, the Owner-Builder applicant will be required to re-qualify for the Program. In an effort to expedite expenditure of funds, the NOHP will be required to meet specific performance benchmarks on the home within twelve (12) months from the date of the applicant eligibility letter [~~of the Reservation~~]. If the NOHP fails to meet the required benchmarks, the Reservation may be subject to cancellation in accordance with the Loan Origination Agreement. The Department may provide one forty-five (45) day extension to benchmark deadlines due to extenuating circumstances that were beyond the Owner-Builder's and/or the NOHPs control. If the NOHP cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. In order to receive another Reservation on the same Owner-Builder applicant the NOHP will be instructed to submit an updated application if funds are available, to ensure the Owner-Builder applicant meets all Texas Bootstrap Loan Program rules. Once an Owner-Builder has been deemed eligible and funds have been reserved, the NOHP must meet the following performance benchmarks depending on the type of loan being requested:

(A) Purchase Money Loan:

*(i)* Within one-hundred twenty (120) days of the date of the applicant eligibility letter construction must have started on the unit; and [~~ninety (90) days of the respective Reservation date the NOHP must have initiated the preconstruction process, which includes the homeownership education and counseling programs of the organization;~~]

*(ii)* Within one (1) year of the date of the applicant eligibility letter the unit must be 100% complete and the purchase money loan must have closed with the owner-builder applicant. [~~one-hundred-eighty (180) days of the respective Reservation date construction must have started on the unit; and~~]

~~*[(iii)* Within one (1) year of the respective Reservation date the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.]~~

(B) Interim and Residential Construction Loans:

*(i)* Within ninety (90) days of the date of the applicant eligibility letter [~~respective Reservation date~~], the loan must close and construction must have started on the unit;

*(ii)* Within one-hundred-eighty (180) days of the date of the applicant eligibility letter [~~respective Reservation date~~], the unit must be at 40% completion;

*(iii)* Within two-hundred-seventy (270) days of the date of the applicant eligibility letter [~~respective Reservation date~~], the unit must be at 80% completion; and

*(iv)* Within one (1) year of the date of the applicant eligibility letter [~~respective Reservation date~~], the unit must be 100% complete and the purchase money loan must have closed with the Owner-Builder applicant.

(2) Quarterly reports are due by the NOHP to the Department on the 10th [~~20th~~] of the month following the end of each calendar quarter. All funding may be suspended until reports are received.

(m) Roles and responsibilities for administering the Program contract. NOHPs are required to:

(1) Qualify potential Owner-Builders for loans;

(2) Provide Owner-Builder homeownership education classes;

(3) Supervise and assist Owner-Builders in building and/or rehabilitate housing;

(4) Facilitate loans made or purchased by the Department under the Program; and

(5) Implement and administer the Program on behalf of the Department.

(n) Loan Origination/Loan Servicing. An NOHP must enter into a Loan Origination Agreement with the Department in order to participate in the Program. If the NOHP wishes to service the loans originated on behalf of the Department it must enter into a Loan Servicing Agreement with the Department. The Department may grant the

request upon reviewing the NOHP capacity to implement those specific functions.

(o) First Year Consultation Agreement. The NOHP agrees that if notified by the Department that Owner-Builder has failed to make a scheduled payment due under the Program loan, or other payments due under the Program loan documents issued under the Program, within the first twelve (12) months of funding, the NOHP will be required to meet with the Owner-Builder and provide counseling and assistance until the payments are made current. After consultation and in the event that the Department and NOHP are not able to reach a consensus about NOHPs effort to bring the Program loan current as required under this chapter, the Department in accordance with its administrative rules may apply appropriate graduated sanctions leading up to, but not limited to deobligation of funds and future debarment from participation in the Program.

(p) Conflict of Interest. The NOHP shall ensure that no employee, officer, or agent of NOHP shall participate in the selection, or in the award or administration of a subcontract supported by funds provided under this Program if a conflict of interest, real or apparent, would be involved. Such conflict of interest would arise when the employee, officer, or agent; any member of his or her immediate family; his or her partner; or, any organization which employs, or is about to employ any of the above; has a financial or other interest in the firm or person selected to perform the subcontract. The NOHP may not accept an application from any of its officers or employees nor any spouse or person related within the third (3rd) degree of affinity (marriage) or consanguinity (blood) to any officer or employee of the NOHP.

(q) Administrative Fee. The NOHP may request their administrative fee upon completion of the house and closing of each mortgage loan.

(r) Blueprints. If NOHPs activity is interim or residential construction, NOHP must provide an original copy of the proposed blueprints to be approved by the Department prior to accepting applications. Blueprints must include the required construction requirements pursuant to §2306.514 of the Texas Government Code. All blueprints submitted for approval must be prepared and executed by an architect or engineer licensed by the state of Texas.

(s) Work Write-up. The NOHP must submit a work write-up for all rehabilitation projects. [~~At a minimum, NOHP must ensure that the home will meet Colonia Housing Standard or Housing Quality Standards.~~] Work write-ups must be reviewed and approved by the Department, before rehabilitation is started. [~~The NOHP must also adopt a set of general specifications that provide detailed guidance to Owner-Builders and contractors on how to complete specific items in a work write-up.~~]

(t) Loan Program requirements. The Department may purchase or originate loans that conform to the lending parameters and the specific loan Program requirements as follows:

(1) Maximum Loan amount not to exceed $45,000. If it is not possible for the Owner-Builder to purchase necessary real property and build adequate housing for $45,000, the NOHP must obtain additional funding from other sources of funds.

(2) Minimum Loan amount is $1,000.

(3) The total amount of all Amortized repayable loans under the Program may not exceed $90,000. Deferred forgivable loans are not included in these total loan calculations.

(4) May not exceed a term of thirty (30) years.

(5) Minimum loan term of five (5) years.

(6) Zero percent (0%) non-interest loans.

(7) When refinancing a contract for deed, the Department will not disburse any portion of the Department's loan until the Owner-Builder receives a deed to the property.

(8) Owner-Builder(s) must have resided in this state for the preceding six (6) months prior to the date of application.

(9) Total Debt-to-Income Ratio. Maximum of 45% (unless otherwise dictated by the mortgage insurer, if any).

(10) Credit Qualifications. Owner-Builder applicants must have a credit history that indicates reasonable ability and willingness to meet debt obligations. In order for the Department to make a reasonable determination, the Department will obtain a tri-merge credit report on all Owner-Builder applicants submitted to the Department for approval.

(11) Unacceptable [~~Indicators of unacceptable~~] credit includes, but is not limited to the following [~~include~~]:

(A) Payments on any open consumer, retail and/or installment account (i.e. auto loans, signature loans, payday loans, credit cards or any other type of retail and/or installment loan) which has been delinquent for more than thirty (30) days on three (3) or more occasions within the last twelve (12) months, unless the Owner-Builder applicant has been current for the four (4) months immediately preceding the application date and must submit to the Department a written explanation of the cause for the previous delinquency, which is acceptable to the Department. For purposes of this subparagraph, the credit history of an Owner-Builder who is a Domestic Farm Laborer [~~domestic farm laborer~~] and receives a substantial portion of his/her income from the production or handling of agriculture or aquacultural products [~~as a laborer on a farm~~] will not apply. However, Owner-Builder must still demonstrate the ability and willingness to meet debt obligations.

(B) A foreclosure which has been completed within the last twelve (12) months prior to the date of application.

(C) An outstanding Internal Revenue Service tax lien or any other outstanding tax liens where Owner-Builder applicant has made no satisfactory payment arrangements for at least six (6) months prior to the date of application.

(D) A court-created or court-affirmed obligation or judgment caused by nonpayment that is currently outstanding must be paid off. The Department may consider this account in good standing if the Owner-Builder applicant has made formal payment arrangements and has a satisfactory payment arrangement history for at least six (6) months prior to the date of application. [~~or has been outstanding within the last twelve (12) months and Owner-Builder applicant has made no satisfactory payment arrangements.~~]

(E) Any account (with the exception of a medical account) that has been placed for "collection," "profit and loss" or "charged off" within the last twelve (12) months prior to the date of application, unless the account has been or will be paid in full. Owner-Builder applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of application.

(F) Any delinquency on any government debt unless the Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of application.

(G) A bankruptcy that has been filed within the past twelve (12) months prior to the date of application.

(H) Any delinquency on child support unless the Owner-Builder applicant has made formal and satisfactory payment arrangements for at least six (6) months prior to the date of application.

(12) The following will not be considered indicators of unacceptable credit:

(A) A bankruptcy in which debts were discharged more than twelve (12) [~~twenty-four (24)~~] months prior to the date of application. Owner-Builder applicant must also have re-established at least one line of credit that must be in good standing with no delinquencies for at least six (6) months prior to the date of application. In addition the Owner-Builder applicant must submit to the Department a letter of explanation regarding the circumstances that led to the bankruptcy which is acceptable to the Department. [~~or where an applicant successfully completed a bankruptcy debt restructuring plan and has demonstrated a willingness to meet obligations when due for the twelve (12) months prior to the date of application.~~]

(B) Where an Owner-Builder applicant has successfully completed a debt restructuring plan and has demonstrated a willingness to meet obligations when due for the six (6) months prior to the date of application. If an Owner-Builder applicant is currently participating in a debt management plan, the trustee or assignee must provide a letter to the Department stating that they are aware and agree with the Owner-Builder applicant applying for a mortgage loan. In addition Owner-Builder applicant must have successfully completed at least six (6) months of the debt management plan with no delinquent payments. [~~A judgment satisfied more than twelve (12) months before the date of application.~~]

(C) Medical accounts that are delinquent or that have been placed for collection.

(13) Liabilities. The Owner-Builder applicant's liabilities include all revolving charge accounts, real estate loans, alimony, child support, installment loans, and all other debts of a continuing nature with more than ten (10) monthly payments remaining. Debts for which the Owner-Builder applicant is a co-signer will be included in the total monthly obligations unless the other party to the debt provides evidence showing that the Owner-Builder applicant has not been making payments on the co-signed loans for the previous twelve (12) months. There may be no late payments within the past twelve (12) months or the debt will be included. Payments on installment debts which are paid off prior to funding are not included for qualification purposes. Payments on all revolving debts (i.e. credit cards, payday loans, lines of credit, unsecured loans) and certain types of installment loans that appear to be recurring in nature will be included in debt ratio calculation, even if the Owner-Builder applicant intends to pay off the accounts, since the Owner-Builder applicant can reuse those credit sources, unless the account is paid off and closed. Payments on any type of loan that have been deferred must be deferred for at least twelve (12) months from the date of closing in order for the debt not to be included in the debt ratio calculation. [~~Any bankruptcy must have been discharged or dismissed in addition the Department will require that the Owner-Builder applicant to submit a letter of explanation regarding the circumstances that led to the bankruptcy.~~]

(14) Must be a single-family detached or attached unit [~~detached single-family residence or property~~] located within the State of Texas[~~; attached single-family residence may qualify under the Program for a rehabilitation loan~~]. Manufactured homes are not eligible. All property taxes must be current prior to closing.

(15) The residence must be occupied as the principal residence of the Owner-Builder within thirty (30) days of the later of the end of the construction period or the closing of the loan. Any additional habitable structures must be removed from the property prior to closing. Portion of the former structure may be utilized as storage upon the Department's written approval prior to closing.

(16) Escrow Account--If the Department is in a first lien position and servicing the loan an [~~An~~] account to which the borrower contributes monthly payments to cover the anticipated costs of real estate taxes, hazard and flood insurance premiums, and other related costs will be required. The Department may [~~will~~] require that up to two (2) months of reserves for hazard and/or flood insurance and property taxes to be collected at the time of closing and these funds must be deposited with the Department [~~mortgage loan servicer~~]. In addition, the Department may [~~will~~] also require that the property taxes be prorated at the time of closing and those funds be deposited with the Department [~~mortgage loan servicer~~]. The Owner-Builders will be required to deposit monthly funds to an escrow account with the mortgage loan servicer in order to pay the taxes and insurance. This will ensure that funds are available to pay for the cost of real estate taxes, insurance premiums, and other assessments when they come due. These funds are included in the Owner-Builders monthly payment to the Department [~~mortgage loan servicer~~]. The Department [~~mortgage loan servicer~~] will establish and administer the escrow accounts in accordance with the Real Estate Settlement and Procedures Act of 1974 (RESPA).

(17) Non-Purchasing Spouse--An Owner-Builder applicant's spouse who does not apply for the loan will be required to execute the information disclosure form and[~~,~~] the deed of trust as a "non-purchasing" spouse. The "non-purchasing" spouse [~~and~~] will not be required to execute the note. For credit underwriting purposes the non-purchasing spouse's debts and obligations will be considered in the Owner-Builder total debt-to-income ratio. The Owner-Builder applicant will be qualified using obligations for which the Owner-Builder applicant and non-purchase spouse are personally or jointly liable. Only the income of the Owner-Builder applicant will be used in determining the total debt to income ratio. For Program eligibility purposes, the income of a non-applicant spouse or any other person(s) living in the home to be purchased must be included in the calculation of family income. Tax Returns, W2's and recent pay check stubs, or Verification of Employment must be submitted to document household income.

(u) Loan Assumption--A Program loan is assumable if the Department determines that the Owner-Builder applicant complies with all Program requirements [~~restrictions~~] in effect at the time of the assumption.

*§2.10. Owner-Builder Qualifications.*

The Owner-Builder must:

(1) Own or be purchasing a piece of real property through a warranty deed or Contract for Deed;

(2) Not have an annual household income that exceeds 60% of the greater of the state or local area median family income as determined by HUD income table [~~guidelines~~];

(3) Demonstrate the willingness and ability to repay the loan;

(4) Execute a Self-Help Agreement committing to provide through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing working through a state-certified NOHP; or provide an amount of labor equivalent to 65% in connection with building or rehabilitating housing for others through a state certified NOHP; provide through the noncontract labor of friends, family, or volunteers and through personal labor at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP or if due to a documented disability or other limiting circumstances the Owner-Builder cannot provide the amount

of personal labor otherwise required, provide through the noncontract labor of friends, family or volunteers at least 65% of the labor necessary to build or rehabilitate the proposed housing by working through a state certified NOHP;

(5) Not have cash [~~liquid~~] assets in excess of $25,000 (excluding retirement and/or 401K accounts);

(6) Successfully complete an Owner-Builder homeownership education class prior to loan funding;

(7) Be given priority for loans if the Owner-Builder has an income of less than $17,500 annually;

[~~(8) Not be currently in delinquency or in default with child support and/or government loans;~~]

(8) [~~(9)~~] Not have any outstanding judgments and/or liens on the property.

*§2.11. Types of Funding Transactions.*

All mortgage loans will be evidenced by a promissory note and will be secured by a lien on the subject property. The following transaction types are permitted by the Department under the Program.

(1) Purchase Money. In a purchase money transaction, all proceeds are used to finance the purchase of a single-family dwelling unit and/or a piece of real property which will be the Owner-Builders primary residence within thirty (30) days of closing the loan. In this instance, a permanent loan is made and the Owner-Builder's repayment obligation begins immediately. In certain situations, eligible closing costs may be financed by the loan proceeds.

(2) Residential Construction (One Time Closing with Owner-Builder). An interim construction loan, also known as a residential construction loan, this transaction is treated as a purchase, because it is a one time closing with the Owner-Builder. Construction period may be up to [~~is for~~] twelve (12) months [~~at which time payments will begin on the 13th month after closing~~].

(3) Interim Construction (Closing with NOHP). Interim construction is a commercial transaction between the NOHP and the Department. The construction period may be up to [~~is for~~] twelve (12) months; once the construction of the home is completed the closing with the Owner-Builder will take place as a purchase money transaction.

(4) Purchase of Mortgage Loans. The Department may purchase and take assignments from mortgage lenders of notes and other obligations evidencing loans or interest in loans for purchase money transactions as described in paragraph (1) of this section or for residential construction transactions as described in paragraph (2) of this section.

*§2.12. Property Guidelines and Related Issues.*

(a) If the Nonprofit Owner-Builder Housing Provider (NOHP) is utilizing Program funds to construct the home they must conform to §2306.514 of the Texas Government Code.

(b) If the property is located within an incorporated area where certain building codes must be met, the Department will require a copy of the certificate of occupancy. If no certificate of occupancy is available from an incorporated area the NOHP must obtain a document from the local government entity showing that the home has passed all required building codes. A copy of the certificate of occupancy or any other document received from the local governing entity must be submitted to the Department upon completion of construction. If the property is located outside an incorporated area inspections will be required to be completed by a professional inspector licensed by the Texas Real Estate Commission. For all housing rehabilitation projects an initial and final inspection will be required. An initial inspection will be required for all reconstruction projects to determine that it is not cost effective for rehabilitation and therefore needs to be reconstructed. If the property is located in an incorporated area a certificate of occupancy will be required for all completed reconstruction and new construction projects. If the property is located outside an incorporated area a final inspection will be required for reconstruction and new construction projects.

(1) The initial inspection for rehabilitation must identify and prioritize areas in need of repair. A copy of the initial inspection reports must be provided to the Department and the homeowner.

(2) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe, sound and sanitary. A copy of the final inspection report must be provided to the Department and the homeowner.

[~~(3) The final inspections for reconstruction and new construction must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions. A copy of the final inspection report must be provided to the Department and the homeowner.~~]

[~~(4) The Contractor must ensure and verify that each construction contractor performing activities in the amount of $10,000.00 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission.~~]

[~~(5) The Contractor must ensure and verify that each housing unit being rehabilitated in the amount of $10,000.00 or more under the Contract is registered with the Texas Residential Construction Commission.~~]

(3) [~~(6)~~] All final inspections must ensure that the construction on the house is complete and that the home is safe. In both instances any deficiencies noted on the certificate of occupancy or the third party inspector's report must be corrected prior to closing. Cosmetic issues such as paint, wall texture, etc. will not be required to be corrected since this is a self-help construction Program. A copy of the final inspection report must be provided to the Department and the Owner-Builder applicant. [~~If the Texas Residential Construction Commission registrations required in this chapter are no longer required by operation of law, such registrations must be obtained from the entity that succeeds to the applicable registration functions of the Texas Residential Construction Commission, if any.~~]

(4) [~~(7)~~] The NOHP and/or the Owner-Builder applicant will be responsible for the selection and/or the fee of a licensed inspector.

(c) Appraisals are required by the Department on each property prior to funding.

(d) Loan [~~Maximum loan~~] to value ratio may not exceed 95%, the lien amounts of forgivable loans and/or grants will not be included in the loan-to-value calculation.

(e) Combined loan to value ration may not exceed 100%, the lien amounts of forgivable loans will be included in the combined loan to value ration.

(f) [~~(e)~~] Improvement Surveys are required on each property.

(g) Lot Surveys are required for all interim and residential construction loans. Upon completion of construction an improvement survey must also be provided.

(h) [~~(f)~~] Insurance requirements:

(1) Title Insurance. The title insurance must be written by a title insurer licensed to do business in the jurisdiction where the mortgaged property is located.

(A) Title Commitment. A copy of the preliminary title report including complete legal description, and copies of covenants, conditions and restrictions, easements, and any supplements thereto is required. The preliminary title report should not be more than thirty (30) days old at the time the submission package (Submission or Funding Package) is sent to the Department.

(B) Mortgagee's Policy. The Department requires a Mortgagee's policy of title insurance in the amount of the loan. The Mortgagee named shall be: "Texas Department of Housing and Community Affairs." Required endorsements include T-36 Environmental Endorsement for all loans made by the Department.

(2) Property Insurance.

(A) Builder's Risk is required where construction of the residence is being financed by the Department. At the end of the construction period, the binder must be endorsed to remove the "pending disbursements" clause.

(B) Hazard Insurance. The Department requires property insurance for protection against loss or damage from the following perils: fire, windstorm, hail, explosion, riot, and civil commotion, damage by aircraft, vehicles or smoke. Homeowner's policies or package policies that provide property and liability coverage are acceptable. All risk policies are acceptable. The amount of hazard insurance coverage at the time the loan is funded must be no less than 100% of the current insurable value of improvements. The Department will require that the premium for a twelve (12) month homeowner's policy and up to two (2) months of reserve be collected at closing and name the Department as loss payee.

(C) Flood insurance is required for all structures located in special flood hazard areas where the U.S. Federal Emergency Management Agency (FEMA) has mandated flood insurance coverage. In addition the Department requires a Life of Loan Flood Certification on all loans. The flood certification must be part of the Funding Package. Flood insurance is not required if the NOHP or Owner-Builder applicant obtains a Letter of Map Amendment from FEMA stating that the area is no longer classified as a special flood hazard area. The letter must include a map illustrating the amended flood hazard area. An Owner-Builder applicant may elect to obtain flood insurance even though flood insurance is not required. However, the Owner-Builder applicant may not be coerced into obtaining flood insurance unless it is required in accordance with this section. Evidence of insurance must be obtained prior to loan funding. Insurance premiums for at least twelve (12) months and up to two (2) months of reserves may [~~will~~] be collected at closing. The Department must be named as loss payee on the policy.

*§2.13. Nonprofit Owner-Builder Housing Program (NOHP) Certification.*

(a) Definitions and Terms. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A nonprofit organization that has submitted a request for certification as a NOHP to the Department. An Applicant for the Texas Bootstrap Loan Program must be a NOHP certified by the Department.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Office of the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of NOHP. An Applicant requesting certification as a NOHP must submit an application for NOHP certification in a form prescribed by the Department. The NOHP application must be submitted prior to submitting an application for Texas Bootstrap Loan Program Reservation system, and must be recertified every three (3) years. The application must include documentation evidencing the requirements of this subsection.

(1) Applicant must have the following legal status at the time of application to apply for certification as a NOHP:

(A) The Applicant must be organized as a nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/nonprofit statute as evidenced by Charter or Articles of Incorporation.

(B) The Applicant must be registered and in good standing with the Office of the Secretary of State and the[~~,~~] State Comptroller's Office [~~and the Texas Residential Construction Commission~~] to do business in the State of Texas.

(C) No part of the nonprofit organization's net earnings may inure to the benefit of any member, founder, contributor, or individual, as evidenced by Charter or Articles of Incorporation.

(D) The Applicant must have the following tax status:

*(i)* A current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a NOHP; or

*(ii)* Classification as a subordinate of a central organization non-profit under the Internal Revenue Code §501(c)(3), as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant.

*(iii)* A nonprofit organization's pending application for §501(c)(3) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's Charter, Articles of Incorporation, Resolutions or Bylaws.

(2) An Applicant must have the following capacity and experience listed in subparagraphs (A) and (B) of this paragraph.

(A) Conforms to the financial accountability standards of [~~24 CFR §84.21,~~] "Standards of Financial Management Systems" as evidenced by:

*(i)* notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department; or

*(ii)* certification from a Certified Public Accountant.

(B) Has a demonstrated capacity of at least one (1) year for carrying out mortgage loan origination and self-housing construction activities, as evidenced by resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with Texas Bootstrap Loan Program funds; or contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with Texas Bootstrap Loan Program funds, to train appropriate key staff of the organization.

(3) An Applicant must submit a current roster of all Board of Directors, including names and mailing addresses.

(4) A local or state government and/or public agency cannot qualify as a NOHP, but may sponsor the creation of a NOHP.

(5) Religious or Faith-based Organizations may sponsor a NOHP if the NOHP meets all the requirements of this section. While the governing board of a NOHP sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a NOHP is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of Program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the Texas Bootstrap Loan Program may not use Texas Bootstrap Loan Program funds to support any inherently religious activities such as worship, religious instruction, or proselytizing; and

(C) Texas Bootstrap Loan Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based NOHP uses as its principal place of worship are always ineligible;

(D) Compliance with subparagraphs (A) - (C) of this paragraph may be evidenced by the Organizations By-laws, Charter or Articles of Incorporation.

(6) A Colonia Self-Help Center as defined under Chapter 2306, Subchapter Z of the Texas Government Code is not required to complete the NOHP Certification process as long as it provides a letter from the appropriate funding entity demonstrating a good standing performance and/or certification standing.

(c) Program Design. Organizations must provide written evidence on how the Owner-Builder will meet the 65% sweat equity requirement.

(d) Applicant must provide details, such as number of houses they are proposing to build, type of proposed financing structure and construction timeliness in order to show evidence of its ability to carry out the Texas Bootstrap Loan Program.

(e) Applicant must provide copies of Program guidelines used to qualify Owner-Builders and homebuyer course curriculum in order to show evidence of its experience in qualifying potential Owner-Builders; providing education classes, counseling and training.

(f) Applicant must submit any past due audit to the Department in a satisfactory format on or before the Application deadline.

(g) Applicants must be in compliance in any existing or prior contracts awarded by the Department.

(h) The Department may certify NOHPs meeting all of the [~~above~~] criteria in subsection (b) of this section operated by a tax-exempt organization listed under §501(c)(3), Internal Revenue Code of 1986 to:

(1) qualify potential Owner-Builders for loans under this chapter;

(2) provide Owner-Builder education classes;

(3) assist Owner-Builders in building or rehabilitating housing; and

(4) originate and/or service loans.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102502
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 475-3916

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## CHAPTER 3. COLONIA SELF-HELP CENTER PROGRAM

**10 TAC §§3.1, 3.2, 3.4 - 3.6**

The Texas Department of Housing and Community Affairs (the "Department") proposes amendments to 10 TAC Chapter 3, §§3.1, 3.2, and 3.4 - 3.6, concerning the Colonia Self-Help Center Program. The amendments are proposed to reflect staff's recommendations of necessary policy and administrative changes to further enhance and streamline operations.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments as proposed.

Mr. Irvine has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be more clarity and certainty in the requirements of the Colonia Self-Help Center Program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed. The proposed amendments will not impact local employment.

The public comment period will be held July 15, 2011 to August 5, 2011 to receive input on the proposed amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-

9606. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 5, 2011.

The amendments are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed amendments.

*§3.1. Purpose and Services.*

(a) The purpose of this chapter is to establish the requirements governing Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Texas Government Code and its funding including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs by the legislature of the annual Texas Community Development Block Grant allocation from the United States Department of Housing and Urban Development. Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or in another area the Department has determined is suitable.

(b) A Colonia Self-Help Center shall set a goal to improve the living conditions of residents in the colonias designated by the Department according to §2306.583 of the Texas Government Code, within a four (4) year period after a Contract is awarded.

(c) A Colonia Self-Help Center may serve individuals and families of low-income and very low-income by:

(1) providing assistance in obtaining loans or grants to build, rehabilitate, repair or reconstruct a home;

(2) teaching construction skills necessary to repair or build a home;

(3) providing model home plans;

(4) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities;

(6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(7) providing credit and debt counseling related to home purchase and finance;

(8) applying for grants and loans to provide housing and other needed community improvements;

(9) providing other services that the Colonia Self-Help Center, with the approval of the Department, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(10) providing assistance in obtaining loans or grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract;

(11) providing access to computers, the internet and computer training pursuant to the General Appropriations Act; and

(12) providing monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(d) Through a Colonia Self-Help Center, a colonia resident may apply for any direct loan or grant program operated by the Department.

(e) Ineligible activities. Any type of activity not allowed by the Federal Housing and Community Development Act of 1974, (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(f) A Colonia Self-Help Center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(g) For a manufactured home to be approved for installation and use as a dwelling in a colonia:

(1) the home must be a HUD-code manufactured home, as defined by §1201.003, Occupations Code and in accordance to §2306.591 of the Texas Government Code;

(2) the home must be habitable, as described by §1201.453 of the Texas Occupations Code; and

(3) ownership of the home must be properly recorded with the manufactured housing division of the Department [~~department~~].

(h) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the Department [~~department~~], including the single-family mortgage revenue bond program under §2306.142 of the Texas Government Code unless the owner complies with this section.

*§3.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Common definitions used under the Community Development Block Grant (CDBG) are incorporated herein by reference.

(1) Applicant--A unit of general local government who is preparing to submit or has submitted a Proposal for Colonia Self-Help Center funds.

(2) Beneficiary--A person or family benefiting from the activities of a Self-Help Center Contract.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) C-RAC--Colonia Residents Advisory Committee. Advises the Department's Governing Board and evaluate the needs of colonia residents, review programs that are proposed or operated through the Colonia Self-Help Centers and activities that may be undertaken through the Colonia Self-Help Centers to better serve the needs of colonia residents.

(5) Colonia--A geographic area located in a county some part of which is within one hundred-fifty (150) miles of the international border of this state that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that: Has a majority population composed of individuals and families of low income and very low income, based on the Federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code, and has the physical and economic characteristics of a colonia, as determined by the Department.

(6) Colonia Self-Help Center Provider--An organization with which the Contractor has an executed Contract to administer Colonia Self-Help Center activities.

(7) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(8) Community Development Block Grant (CDBG) nonentitlement area funds--Funds awarded to the State of Texas pursuant to the Housing and Community Development Act of 1974, Title 1 [~~1974, Title I~~], as amended, (42 U.S.C §§5301, et seq.) and the regulations promulgated thereunder in 24 CFR Part 570.

(9) Contract--A written agreement including all amendments thereto, executed by the Department and Contractor.

(10) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the drawdown processes. The budget also includes all other funds involved that are necessary to complete the Performance Statement [~~performance statement~~] specifics of the Contract.

(11) Contractor--A Unit of General Local Government with which the Department has executed a Contract.

(12) Department--The Texas Department of Housing and Community Affairs.

(13) HUD--The United States Department of Housing and Urban Development.

(14) Implementation Manual--A set of guidelines designed to be an implementation tool for the Contractor and Colonia Self-Help Center Providers that have been awarded Community Development Block Grant Funds and allows the Contractor to search for terms, regulations, procedures, forms and attachments.

(15) Income Eligible Families [~~(includes both Low and Very low-income families)~~]--

(A) Low-income families--families whose annual incomes do not exceed 80% of the median income of the area as determined by HUD and published by the Department, with adjustments for family size; [~~and~~]

(B) Very low-income families--families whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD and published by the Department, with adjustments for family size; and[~~.~~]

(C) Extremely low-income families--families whose annual incomes do not exceed 30% of the median family income for the area, as determined by HUD and published by the Department, with adjustments for family size.

[~~(16) Needs assessment--A demographic and characteristics study of the colonias residing in the target area and the housing needs that the Colonia Self-Help Center is designed to address, using qualitative and quantitative information and other source documentation that is required as a part of a Proposal.~~]

(16) [~~(17)~~] Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 U.S.C. §5302.

(17) [~~(18)~~] Nonprofit organization--A public or private organization that:

(A) Is organized under state or local laws;

(B) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) Has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as amended, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling or classification as a subordinate of a central organization nonprofit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS, must be effective throughout the length of the Contract.

(18) [~~(19)~~] Performance Statement--An Exhibit in the Contract which specifies in detail the scope of work to be performed.

(19) [~~(20)~~] Proposal--A written request for Colonia Self-Help funds in the format required by the Department.

(20) [~~(21)~~] Self-Help--Housing programs which allow low, [~~and~~] very low, and extremely low-income families to build or rehabilitate their homes through their own labor or volunteers.

(21) [~~(22)~~] TDRA--Texas Department of Rural Affairs.

(22) TREC--Texas Real Estate Commission.

(23) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR §92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. A county is considered a unit of general local government under the Colonia Self-Help Center Program.

*§3.4. Allocation and the Colonia Self Help Center Proposal Requirements.*

(a) The Department distributes Colonia Self-Help Center funds to Unit of General Local Governments (UGLG) from the 2.5% set-aside of the annual Community Development Block Grant (CDBG) allocation to the State of Texas.

(b) The Department shall allocate no more than $1.2 million per Colonia Self-Help Center award except as provided by §3.6(h)(3) [~~§3.6(i)(2)~~] of this chapter (relating to Colonia Self Help Center Contract Operation and Implementation). If there are insufficient funds available from any specific program year to fund a proposal fully, the awarded Contractor may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(c) With a baseline award beginning at $700,000, the Department will add an additional $100,000 for each expenditure threshold, as defined in §3.8 of this chapter (relating to Expenditure Thresholds and Closeout Requirements) [~~(6-month, 18-month, 30-month, and 42-month)~~], met on the current Colonia [~~previous~~] Self Help Center Contract, and an additional $100,000 for an accepted proposal submitted by the deadline. If a Contractor can demonstrate that any violation of an Expenditure Threshold was beyond the control of the Contractor, it may request of the Board that an individual violation be waived for the purpose of future funding. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the expenditure threshold requirements if the Board finds the waiver is appropriate to fulfill the purposes or policies, of the Texas Government Code, or for good cause, as determined by the Board.

(d) The Contractor shall submit its proposal no later than three (3) months before the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, whichever [~~which ever~~] comes first. If this requirement is not met, the Department

will apply the options outlined in subsection (c) of this section which will [and may] result in lost and delayed funding.

(e) Proposal reviews are conducted on a first-come first-serve basis until all Self Help Center funds for the current program year and deobligated Self Help Center funds are committed. Each complete proposal will be assigned a "received date" based on the date and time it is received by the Department.

(f) In order to be accepted, each proposal must include the following:

(1) Evidence of the submission of the Contractor's current annual single audit;

(2) A Colonia Identification Form for each colonia to be served, including all required back-up documentation as identified on the form, signed by the county judge; [A comprehensive needs assessment not older than three (3) years, for each of the five (5) colonias identified to receive concentrated attention from that center;]

[(3) A description of the five colonias to be served. Information should present an accurate picture of the areas to be served to include the number of houses, the number of platted and unplatted lots, water and wastewater services, utilities, housing conditions and number of residents;]

(3) [(4)] A boundary map for each of the five colonias;

[(5) A description of the scope of work. Based on the results obtained by the needs assessments, the Contractor shall develop a scope of work for each colonia based on the activities as listed in §3.1(c) of this chapter (relating to Purpose and Services). In order to provide these services, the Contractor may be required to leverage funds, coordinate with financial institutions, prepare grant applications and coordinate with their contracted partners;]

(4) [(6)] A description of the method of implementation. For each colonia to be served by the Colonia Self Help Center, the Contractor shall describe the services and activities to be delivered. The Proposal must identify:

(A) The percentage (15% minimum) and scope of work that will be performed using self-help methodologies;

(B) The estimated percentage or services that will be contracted to the Colonia Self Help Center Provider; and

(C) The activities that the Contractor will be administering.

[(7) Evidence that the contracted Colonia Self-Help Center provider selected by the Contractor has the capacity to administer and manage financial resources and provided documentation and auditable programmatic compliance, as evidenced by previous experience in any of the following:]

[(A) implementation of a CDBG contract;]

[(B) affordable housing, including new construction; and housing rehabilitation, reconstruction, small repair; and experience in homebuyer and down payment assistance programs;]

[(C) grantsmanship, project planning and development in housing and infrastructure, and project management;]

[(D) home ownership counseling, home loan processing and coordinating with private financial institutions;]

[(E) property development, including experience in processes related to surveying, platting, and recording of property records;]

[(F) self-help programs related to housing or infrastructure, including operation of a tool library; and]

[(G) managing state/federally funded projects or projects funded under private foundations and not have major outstanding monitoring or audit issues.]

(5) [(8)] The proposed Performance Statement. The Contractor must include the number of colonia residents to be assisted from each activity [colonia], the activities to be performed (including all sub-activities under each budget line item), and corresponding budget;

(6) [(9)] The proposed Contract Budget must address the following:

(A) The Administration line item may not exceed 15% of the total budget;

(B) The Public Service line item may not exceed [more than] 15% of the total budget;

(C) The proposal must identify at least 15% of the budget that will be allocated for direct Self-Help activities;

(D) The amount of leveraged funding, if applicable; and

(E) Direct Delivery Costs (soft costs) for all contractual activities cannot exceed 10% of each budget line item, with the exception of the Rehabilitation budget line item which cannot exceed 15%. Direct Delivery Costs (soft costs) are costs related to and identified with a specific housing unit or public service other than construction costs. Eligible direct delivery costs include:

*(i)* preparation of work write-ups, work specifications, and cost estimates;

*(ii)* architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit or public service;

*(iii)* home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

*(iv)* other costs as approved by the Department [Department's executive director].

(7) [(10)] Proposed housing guidelines (includes small repair, rehabilitation, reconstruction, new construction and all other housing activities).

[(11) Pre-agreement costs request, if applicable.]

(8) [(12)] Evidence of model subdivision rules adopted by the Contractor.

(9) [(13)] Written policies and procedures for the following, as applicable:

(A) solid waste removal;

(B) construction skill classes;

(C) homeownership classes;

(D) technology access;

(E) homeownership assistance; and/or

(F) tool lending library. All Colonia Self Help Centers are required to operate a tool lending library.

(10) [(14)] Authorized signatory form and accompanying UGLG resolution and direct deposit authorization.

(11) [~~(15)~~] Unit of General Local Government resolution authorizing the submission of the proposal and appointing the primary signator for all Contract documents.

(12) [~~(16)~~] Acquisition report (even if there is no acquisition activity).

(13) [~~(17)~~] Certification of exemption for HUD funded projects.

(14) [~~(18)~~] Initial disclosure report.

(g) Upon receipt of the Proposal, the Department will perform an initial review to determine whether the Proposal is complete and that each activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(b)(3)).

(h) The Department may reduce the funding amount requested in the proposal in accordance to subsection (c) of this section. Should this occur, the Department shall notify the appropriate Contractor [~~within ten (10) working days~~] before the proposal is submitted to C-RAC for review, comments and approval. The Department and the Contractor will work together to jointly agree on the performance measures and proposed funding amounts for each activity.

~~[(i) If applicable, the Department shall coordinate with the Texas Water Development Board and TDRA to eliminate delay in water and wastewater hookups.]~~

(i) [~~(j)~~] The Department shall execute a four (4) year Contract with Contractor. No Contract extensions will be allowed. If the Contractor requirements are completed prior to the end of the four (4) year contract period, the Contractor may submit a new proposal.

(j) [~~(k)~~] Decline to Fund. The Department may decline to fund any proposal if the activities do not, in the Department's sole determination, represent a prudent use of Colonia Self Help Center funds. The Department is not obligated to proceed with any action pertaining to any proposal which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. [~~The Department through its executive director or its designee reserves the right to negotiate individual elements of any proposal.~~]

*§3.5. Colonia Residents Advisory Committee Duties and Awarding Contracts.*

(a) The Board shall appoint not fewer than five persons who are residents of colonias to serve on the Colonia Residents Advisory Committee. The members of the Colonia Residents Advisory Committee shall be selected from lists of candidates submitted to the Department by local nonprofit organizations and the commissioner's court of a county in which a Colonia Self-Help Center is located.

(b) The Colonia Resident Advisory Committee members' terms will expire every four (4) years. Colonia Resident Advisory Committee members may be reappointed by the Board; however, the Board shall review and approve all members at least every four (4) years.

(c) The Board shall appoint one committee member to represent each of the counties in which a Colonia Self-Help Center is located. Each committee member:

(1) must be a resident of a colonia in the county the member represents; and

(2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a Contract under this chapter and cannot be in default on any Department obligation.

(3) The Department will conduct a compliance check on all members.

(d) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(e) The Colonia Resident Advisory Committee shall advise the Board regarding:

(1) the housing needs of colonia residents;

(2) appropriate and effective programs that are proposed or are operated through the Colonia Self-Help Centers; and

(3) activities that might be undertaken through the Colonia Self-Help Centers to serve the needs of colonia residents [~~better~~].

(f) The Colonia Resident Advisory Committee shall advise the colonia initiatives coordinator as provided by §775.005 of the Texas Government Code.

(g) Awarding Contracts:

(1) Upon reaching an agreement with the Contractor, the Department will set the date for the Colonia Resident Advisory Committee meeting. The Colonia Resident Advisory Committee shall meet before the 30th calendar day proceeding the date on which a contract is scheduled to be awarded by the Board for the operation of a Colonia Self-Help Center and may meet at other times.

(2) The Contractor shall be present at the Colonia Resident Advisory Committee if its Proposal is being considered to answer questions that the Colonia Resident Advisory Committee may have.

(3) After the Colonia Resident Advisory Committee makes a recommendation on a proposal, the recommendation will undergo the Department's award process.

~~[(4) The Contractor whose Proposal is being presented to the Board shall be invited to attend the Board Meeting in which the award is an agenda item.]~~

(h) Reimbursement of Colonia Resident Advisory Committee members for their reasonable travel expenses in the manner provided by §3.6(k)[~~(l)~~] of this chapter (relating to Colonia Self Help Center Contract Operation and Implementation) is allowable and shall be paid by the Contractor.

*§3.6. Colonia Self Help Center Contract Operation and Implementation.*

(a) The Department shall contract with a Unit of General Local Government (UGLG) for the operation of a Colonia Self-Help Center. The UGLG shall subcontract with a local nonprofit organization, local community action agency, or local housing authority that has demonstrated the ability to carry out all or part of the functions of a Colonia Self-Help Center. The contracted Colonia Self-Help Center provider selected by the UGLG shall have the capacity to administer and manage financial resources and provided documentation and auditable programmatic compliance, as evidenced by previous experience in any of the following:

(1) implementation of a CDBG contract;

(2) affordable housing, including new construction; and housing rehabilitation, reconstruction, small repair; and experience in homebuyer and down payment assistance programs;

(3) grantsmanship, project planning and development in housing and infrastructure, and project management;

(4) home ownership counseling, home loan processing and coordinating with private financial institutions;

(5) property development, including experience in processes related to surveying, platting, and recording of property records;

(6) self-help programs related to housing or infrastructure, including operation of a tool library; and

(7) managing state/federally funded projects or projects funded under private foundations and not have major outstanding monitoring or audit issues.

(b) Upon award of Colonia Self-Help Center funds by the Board, the Department shall deliver a Contract based on the scope of work to be performed within thirty (30) days of the award date, unless extenuating circumstances do not allow for delivery. Any activity funded under the Colonia Self Help Center Program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract.

(c) Environmental. Contractors are required to complete their environmental reviews in accordance with 24 CFR Part 58 and receive the Authority to Use Grant Funds from the Department before:

(1) Any commitment of Community Development Block Grant (CDBG) funds (i.e., execution of a legally binding agreement and expenditure of CDBG funds) for activities other than those that are specifically exempt from environmental review.

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e. demolition, excavating, etc.) or limit the choice of alternatives (i.e. acquisition of real property, rehabilitation of buildings or structures, etc.).

[~~(d) All housing rehabilitation, reconstruction, and new construction contractor/builders, including Self Help Center Provider(s) performing any housing activities, as defined by the Texas Residential Construction Commission, making improvements to or reconstructing an existing home at a cost exceeding $10,000 must be registered with the Texas Residential Construction Commission.~~]

(d) [~~(e)~~] All reconstruction and new construction activities must meet the accessibility requirements pursuant to §2306.514 of the Texas Government Code.

(e) [~~(f)~~] Request for Payments. The Contractor shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Contractor's full and satisfactory performance of its obligations under the Contract.

(1) $2,500 is the minimum amount for a draw to be processed, unless it is the final draw request. [~~Exceptions to this rule are as follows:~~]

[~~(A) The draw request exceeds 25% of a budgeted line item but less than $2,500 and the Contractor is requesting funds only for that line item.~~]

[~~(B) The draw request is for the final retainage of a construction contract.~~]

[~~(C) The Contractor received prior approval from the Department.~~]

[~~(D) The request is the final draw.~~]

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Contractor is responsible for maintaining a complete record of all costs incurred in carrying out the activities of the Contract.

(3) Draw requests for all housing activities will only be reimbursed upon satisfactory completion of types of activities (i.e., all plumbing completed, entire roof is completed, etc.), consistent with the [~~work write-up and subsequent~~] construction contract.

(4) The Contractor will be the principal contact responsible for reporting to the Department and submitting draw requests.

(f) [~~(g)~~] Reporting. The Contractor shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the tenth (10th) [~~twentieth (20th)~~] calendar day of the month after the end of each calendar quarter. The Contractor shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, activities completed and total number of Beneficiaries.

(g) [~~(h)~~] Inspections. At a minimum, inspections will be required for all housing rehabilitation (initial and final), small home repair (initial only), reconstruction (initial and final) and new construction (final only) activities and must be inspected by a professional inspector licensed by TREC [~~the Texas Real Estate Commission~~]. Prior to awarding a contract with a licensed inspector, the inspector shall not have any disciplinary actions taken against the inspector within the last five (5) years by TREC and shall be in good standing with TREC.

(1) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe and that it meets at a minimum, Housing Quality Standards [~~Colonia Housing Standards~~]. A copy of the final inspection report must be given to the homeowner.

(2) The final inspections for reconstruction and new construction shall not include any deficiencies noted on the inspection report. [~~must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions.~~] A copy of the final inspection report must be given to the homeowner.

(3) The initial inspections for small home repair will identify and prioritize areas in need of repair. Only the area being repaired under the small home repair activity must meet, at a minimum, Housing Quality Standards, unless otherwise approved by the Department [~~Colonia Housing Standards~~]. A copy of the initial inspection report must be given to the homeowner.

(4) Homes receiving only utility [~~first-time water~~] connections are not required to meet, Housing Quality Standards, [~~Colonia Housing Standards~~] or have a third-party inspection.

(5) The Department will only reimburse for two inspection reports for housing rehabilitation and reconstruction, and one inspection report for new construction and small home repair.

(6) Cosmetic issues such as paint, wall texture, etc. identified as deficiencies on final inspection reports will not be required to be corrected if self-help construction is utilized. [~~The Contractor must ensure and verify that each construction contractor performing activities in the amount of $10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission.~~]

[(7) The Contractor must ensure and verify that each housing unit being rehabilitated in the amount of $10,000 or more under the Contract is registered with the Texas Residential Construction Commission.]

(h) [(i)] Amendments. Any alterations, additions, or deletions to the terms of the Contract shall be submitted in writing to the Department. Reduced Beneficiaries or activities, due to extenuating or unforeseeable circumstances, may be allowed as approved by the Department. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract:

(1) Contract Time Extensions beyond the four (4) year contract period will not be allowed for Self-Help Center contracts.

(2) Changes in beneficiaries. Reductions in contractual deliverables and beneficiaries shall require a contract amendment. Increases in contractual deliverables and beneficiaries that do not shift funds, or cumulatively shift less than 10% of total contract funds, shall be completed through a contract modification rather than a contract amendment.

(3) [(2)] The Department, at its discretion and in coordination with a Contractor, may increase a contract budget amount and the number of activities and beneficiaries based on the availability of Self Help Center funds, the exemplary performance in the implementation of a Contractor's current contract, and the time available in the four (4) year contract period. Upon Board approval, the cap on the maximum contract amount may be exceeded if the terms of this paragraph are met by a Contractor.

(i) [(j)] If the Contractor fails to meet a Contract requirement the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

(j) [(k)] Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of this chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies, Chapter 2306 of the Texas Government Code, or for good cause, as determined by the Board.

(k) [(l)] Travel. Costs incurred by Colonia Self Help Center employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do no exceed charges normally allowed by the State Comptroller's Travel Allowance Guide.

(l) Every new construction and reconstruction, and any rehabilitation construction costs exceeding thirty thousand dollars ($30,000) in hard costs shall have a lien placed on the property secured by a deferred forgivable loan not shorter than five (5) years.

(m) Blueprints for new construction and reconstruction shall be required and submitted to the Department and must include the required construction requirements pursuant to §2306.514 of the Texas Government Code. All proposed blueprints submitted for approval must be prepared and executed by an architect or engineer licensed by the state of Texas.

(n) The Contractor's initial and any revised Housing Activity Guidelines shall be approved by commissioners' court and the Department prior to implementation.

(o) Access to all public service activities identified in the contract shall be provided at least two (2) Saturdays a month during hours preferable to colonia residents. In addition, access shall be provided at least one day during the workweek after hours for a period long enough to allow colonia residents to utilize the services.

(p) The purchase of new tools, new computers and computer equipment shall only occur within the first twenty four (24) months of the contract period. Any purchases of these items after twenty four (24) months shall be approved by the Department prior to purchase.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102503
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 475-3916

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# CHAPTER 51. HOUSING TRUST FUND RULE

## 10 TAC §§51.1 - 51.16

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Housing and Community Affairs (the "Department") proposes the repeal of 10 TAC Chapter 51, §§51.1 - 51.16, concerning the Housing Trust Fund. This repeal is proposed in order to simplify the existing rules for the Housing Trust Fund.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal.

Mr. Irvine has also determined that for each year of the first five-years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules to enhance the State's ability to provide decent, safe and sanitary housing administered by the Department. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. The proposed repeal will not impact local employment.

The public comment period will be held between July 15, 2011 to August 5, 2011 to receive input on the repeal of the sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 5, 2011.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed repeal.

*§51.1. Purpose and Use of the Housing Trust Fund.*

*§51.2. Definitions.*

*§51.3. Eligible and Ineligible Applicants and Applications.*

*§51.4. Communication with Department Employees.*

*§51.5. General Application Procedures and Requirements.*

*§51.6. Application Review Process.*

*§51.7. Criteria for Funding.*

*§51.8. General Process for Awards.*

*§51.9. Additional Requirements for Development and Development Applications.*

*§51.10. Contract Administration Requirements.*

*§51.11. Mortgage Loans and Loan Support Documentation.*

*§51.12. Other Program Requirements.*

*§51.13. Records to be Maintained.*

*§51.14. Amendments.*

*§51.15. Events Creating Deobligation of Housing Trust Funds.*

*§51.16. Citizen Participation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102504
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 475-3916

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**10 TAC §§51.1 - 51.11**

The Texas Department of Housing and Community Affairs (the "Department") proposes new 10 TAC Chapter 51, §§51.1 - 51.11, concerning the Housing Trust Fund. The new sections are proposed in order to remove any redundant or unnecessary references to other federal or state statutes and include recommendations for necessary policy and administrative changes to further enhance and streamline operations.

Mr. Timothy K. Irvine, Acting Director, has determined that for the first five-year period the proposed new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Irvine has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be enhanced compliance with formalized policy, all contractual and statutory requirements.

There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed. The proposed new sections will not impact local employment.

The public comment period will be held between July 15, 2011 to August 5, 2011 to receive input on the new sections. Written comments may be submitted to Texas Department of Housing and Community Affairs, Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by email to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 475-1672. ALL COMMENTS MUST BE RECEIVED BY 5:00 P.M. AUGUST 5, 2011.

The new sections are proposed pursuant to the authority of the Texas Government Code, Chapter 2306 which provide the Department with the authority to adopt rules governing the administration of the Department and its programs.

No other statutes, articles, or codes are affected by the proposed new sections.

*§51.1. Purpose.*

This chapter clarifies the administration of the Texas Housing Trust Fund (HTF). The Housing Trust Fund provides loans, grants or other comparable forms of assistance to income-eligible individuals, families and households. The Housing Trust Fund is administered in accordance with Chapter 2306 of the Texas Government Code.

*§51.2. Definitions.*

The following words and terms, when used in this chapter, shall have the following meanings unless the context or the NOFA indicate otherwise. Lack of capitalization of a term or word in this chapter does not indicate that the term is undefined. Other definitions may be found in Chapter 2306 of the Texas Government Code.

(1) Activity--A form of assistance by which HTF funds are used to provide incentives to develop and support affordable housing and homeownership through acquisition, new construction, reconstruction, and rehabilitation of residential housing.

(2) Administrative Deficiencies--The absence of information or a document from the Application as required by these rules and program manuals.

(3) Administrator--A unit of government, nonprofit entity or other party who has an executed written agreement or contract with the Department committing the Department to provide funds upon the completion of certain actions called for in the agreement or contract.

(4) Amortized--A loan in which the principal as well as the interest, if applicable, is payable monthly or in some other periodic installment over the term of the loan.

(5) Applicant--A Person who has submitted an Application for Department funds or any other form of assistance.

(6) Application--A request for funds submitted to the Department in a form prescribed by the Department, including any exhibits or other supporting material.

(7) Application Acceptance Period--The period of time that Applications may be submitted to the Department as more fully described in the applicable Notice of Funding Availability (NOFA).

(8) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Office of the Secretary of State.

(9) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(10) Chapter 2306--Chapter 2306 of the Texas Government Code.

(11) Combined Loan to Value (CLTV)--Value of all liens against the property and/or loans, including forgivable loans.

(12) Committed--Funds approved by the Department to provide assistance to an individual or family.

(13) Competitive Application Cycle--A defined deadline in which all Applications must be submitted in accordance with the NOFA.

(14) Contract--The executed written agreement between the Department and an Administrator performing an activity related to a program that outlines performance requirements and responsibilities assigned by the document.

(15) Contract Period--The length of time between the contract's Effective Date (starting date) through its ending date.

(16) Deobligation--The cancellation of funds involving some or all of a financial obligation between the Department and an Administrator.

(17) Department--The Texas Department of Housing and Community Affairs.

(18) Development--A Project in which an Applicant, Administrator, or Development Owner has or will have an ownership interest and that has a construction component, either in the form of New Construction or Rehabilitation of multi-unit or single family residential housing.

(19) Development Owner--Any person, general partner, or affiliate of a person who owns or proposes a Development or expects to acquire control of a development under a purchase contract and is the person responsible for performing under the Contract with the Department.

(20) Development Site--The area, or if scattered site, areas for which the Development is proposed to be located.

(21) Domestic Farm Laborer--Individuals (and the family) who receive a substantial portion of their income from the production or handling of agricultural or aquacultural products.

(22) Draw--Funds requested by the Administrator, approved by the Department and subsequently disbursed to the Administrator.

(23) Effective Date--The date on which the Department's Governing Board approved action or when all applicable parties have signed a contract or agreement.

(24) First time Homebuyer--A First-Time Homebuyer is:

(A) An individual who has had no ownership in a principal residence in Texas during the three (3) year period ending on the date of purchase of the property.

(B) A single parent who has only owned with a former spouse while married.

(C) An individual who is a displaced homemaker and has only owned with a spouse.

(D) An individual who has only owned a principal residence not permanently affixed to a permanent foundation in accordance with applicable regulations.

(E) An individual who has only owned a property that was not in compliance with State, local building codes and which cannot be brought into compliance for less than the cost of constructing a permanent structure.

(25) Forgivable Loan--Financial assistance in the form of money that, in an executed agreement, is not required to be repaid.

(26) General Partner--A Person, or Persons, who is identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(27) Grant--Financial assistance that is awarded in the form of money for a specific purpose and that is not required to be repaid. A Grant includes a forgivable loan.

(28) Household--One or more persons occupying a housing unit. May also be referred to as a "Family".

(29) Housing Trust Fund (HTF)--The fund created under Chapter 2306 of the Texas Government Code and governed by this title.

(30) HUD--United States Department of Housing and Urban Development

(31) Income and Rent Limits--Limits in place for maximum allowable incomes and rents for specific programs administered by the Department, as provided by the Department.

(32) Individuals and families of Low-Income--Individuals and families individuals or families whose annual incomes do not exceed 80 percent of the greater of state or local median income as provided by the Department.

(33) Individuals and families of Very Low-Income--Individuals or families whose annual incomes do not exceed 60 percent of the greater of state or local median income as provided by the Department.

(34) Individuals and families of Extremely Low Income--Individuals or families whose annual incomes do not exceed 30 percent of the greater of state or local median income as provided by the Department.

(35) Lien--A claim against a property that provides security for repayment of a debt or obligation of the property owner.

(36) Loan--Financial assistance in the form of money that is required to be repaid in accordance with terms and interest rates provided in the executed agreement.

(37) Loan Assumption--An HTF loan may be assumable if the Department determines that all program requirements in effect at the time of the assumption are met.

(38) Loan to Value (LTV)--The amount of the outstanding mortgage loan divided by the property's appraised value. The LTV for an HTF Loan cannot exceed 100 percent.

(39) Land Use Restriction Agreement (LURA)--An agreement between the Department and a Person related to a specific Property or Properties which is filed with the responsible recording authority.

(40) Manufactured Housing Unit (MHU)--A structure transportable in one or more sections which, in traveling mode, is 8 body-feet or more in width or 40 body-feet or more in length, or when erected on site, is 320 square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required facilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. MHUs must comply with §19(1) of the Texas Manufactured Housing Standards Act.

(41) Multifamily Structure--A property designed and built to support the habitation of more than one person or one household may include an attached or semi-detached unit.

(42) New Construction--A project in which the main purpose of funds is to create additional dwelling units and is not a Rehabilitation or Reconstruction.

(43) NOFA--Notice of Funding Availability.

(44) Nonprofit Organization--An organization, institution or agency that:

(A) is organized under state or local laws;

(B) has no part of its net earnings benefiting any member, founder, contributor, or individual; and

(C) is a tax exempt §501(c) organization. A pending application for §501(c) status cannot be used to comply with the tax status requirement.

(45) Open Reservation Cycle--A defined period during which an Administrator may submit Applications according to a published NOFA and which will be reviewed on a first come-first serve basis until all funds available are committed, or until the NOFA is closed. Applications will be reviewed in accordance with NOFA and manual for the applicable HTF program.

(46) Parity Lien--A lien position whereby two or more lenders share a security interest of equal priority in collateral.

(47) Person--Any individual, partnership, corporation, association, local unit of government, community action agency, or public or private organization of any character.

(48) Persons with Disabilities--An individual who has a disability that is a physical or mental impairment that substantially limits one or more major life activities.

(49) Principal Residence--The primary housing unit that an individual or family inhabits.

(50) Program Manual--A set of guidelines designed to be an implementation tool for the Administrator that has executed an agreement and allows the Administrator to search for terms, statutes, regulations, forms and attachments. The program manual may be developed by the Department and amended or supplemented from time-to-time.

(51) Property--The real estate and all improvements thereon which are the subject of the HTF funds whether currently existing or proposed to be built thereon in connection with the funds.

(52) Public Housing Authority--A housing authority established under Chapter 392 of the Texas Local Government Code.

(53) Received Date--The date an Application is verified to be received by the Department.

(54) Reconstruction--The rebuilding of an existing structure on the same lot where housing exists at the time of Application. HTF funds may also be used to build a new foundation or repair an existing foundation.

(55) Rehabilitation--Includes the alteration, improvement or modification of an existing structure. It may also include moving an existing structure to a foundation constructed with HTF funds.

(56) Reservation--An amount of funds set-aside for each individual Applicant registered into the Department's HTF registration website.

(57) Resolution--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(58) Senior Lien--A lien that takes priority over the Department's lien and any subsequent liens.

(59) Setup--The submission of required information into the Reservation System in order to reserve funds for activities specified in the applicable NOFA.

(60) Single family structure--A property designed and built to support the habitation of one person or one household. This includes an attached or detached unit, including structures such as a single-family detached unit, condominium unit, and/ or a single unit in a duplex or triplex.

(61) TAC--Texas Administrative Code.

(62) Title Commitment--A document from a title company showing the status of a property's ownership and pledging to issue a title insurance policy when the requirements shown therein are met.

*§51.3. Allocation of Funds.*

(a) The Department administers all HTF funds provided to the Department in accordance with Chapter 2306 of the Texas Government Code. The Department may solicit gifts and grants to endow the fund.

(b) Pursuant to §2306.202(b) of the Texas Government Code, use of the HTF is limited to providing:

(1) Assistance for individuals and families of low and very low income;

(2) Technical assistance and capacity building to nonprofit organizations engaged in developing housing for individuals and families of low and very low income;

(3) Security for repayment of revenue bonds issued to finance housing for individuals and families of low and very low income; and

(4) Subject to the limitations in §2306.251 of the Texas Government Code, the Department may also use the fund to acquire property to endow the fund.

(c) Regional Allocation. Funds shall be allocated to achieve broad geographic dispersion by awarding funds in accordance with §2306.111(d) and (g) of the Texas Government Code.

(d) Set-Asides. In accordance with §2306.202(a) of the Texas Government Code and program guidelines:

(1) In each biennium the first $2.6 million available through the HTF for loans, grants, or other comparable forms of assistance shall be set aside and made available exclusively for Local Units of Government, Public Housing Authorities, and Nonprofit organizations.

(2) Any additional funds may also be made available to for-profit organizations provided that at least 45 percent of available funds, as determined on September 1 of each state fiscal year, in excess of the first $2.6 million shall be made available to nonprofit organizations.

(3) The remaining portion shall be distributed to nonprofit organizations, for-profit organizations, and other eligible entities, pursuant to §2306.202 of the Texas Government Code.

*§51.4. Use of Funds.*

(a) Use of Additional or Deobligated Funds. In the event the Department receives additional funds, such as loan repayments, donations and interest earnings, the Department will redistribute the funds in accordance with the HTF Plan in effect at the time the additional funds become available.

(b) Reprogramming of Funds. If funding for a program is undersubscribed or funds not utilized, within a timeframe as determined by the Department, remaining funds may be reprogrammed at the discretion of the Department consistent with the HTF Plan in effect at the time.

(c) Deobligation of Funds. The Department may deobligate all or a portion of the awarded or committed amount if such amount is not expended in a timely manner in accordance with the NOFA and contract or Reservation agreement.

(d) The Department may terminate an agreement in whole or in part if the Administrator does not achieve performance benchmarks as outlined in agreement, NOFA, contract or Reservation agreement.

(e) Amendments. The Department may authorize, execute, and deliver modifications and/or amendments to any program written agreement provided that:

(1) Time extensions. The Department may collectively provide up to one six (6) month extension to the end date of any agreement. Any additional time extension granted by the Department shall include a statement by the Department relating to unusual, non-foreseeable or extenuating circumstances. If the extension is longer than six (6) months and the Department determines that a statement related to unusual, non-foreseeable, or extenuating circumstances cannot be issued, it will be presented to the Governing Board for approval, approval with modifications, or denial of the requested extension; and

(2) In the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Department, significantly decrease the benefits to be received by the Department.

*§51.5. Prohibited Activities.*

(a) Conflict of Interest.

(1) Conflict Prohibited. No person described in paragraph (2) of this subsection who exercises, has the power or ability to exercise, or has exercised any functions or responsibilities with respect to HTF activities under Chapter 2306 of the Texas Government Code, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from a HTF assisted activity, or have any interest, directly or indirectly, legally or beneficially, in any HTF contract, subcontract or agreement or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure and for one year thereafter.

(2) Persons Covered. The conflict of interest provisions of paragraph (1) of this subsection apply to any person ("Covered Persons") who is an employee, agent, consultant, officer, trustee, director, member of a governing board or other oversight body, elected official or appointed official of the Administrator, or any person acting in any such capacity or role, however designated.

(3) No employee, officer or agent of the Administrator shall participate in selection, or in the award or administration of a agreement supported by HTF funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the following persons have a financial or other interest in a firm under consideration to be selected for award or certified to administer funds:

(A) Covered Person;

(B) any member of his or her immediate family;

(C) his or her partner;

(D) an organization which employs, or is about to employ, anyone listed in subparagraphs (A) - (E) of this paragraph; or

(E) an organization controlled by any such person.

(4) The Covered Persons of the Administrator will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. Administrators may set minimum rules where the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the officers, employees, or agents of the Administrator, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(b) The following activities are prohibited in relation to the origination of a HTF loan, but may be charged as an allowable cost by a third (3rd) party lender for the origination of all other loans originated in connection with an HTF loan:

(1) Payment of delinquent property taxes or related fees or charges on properties to be assisted with HTF funds;

(2) Loan Origination fees;

(3) Application fee;

(4) Discount fees;

(5) Underwriter fee;

(6) Loan processing fees; and

(7) Other fees not approved by the Department.

(c) Persons receiving or benefiting from HTF funds, as determined by the Department, may not be currently in delinquency or in default with child support and/or government loans.

(d) Unless otherwise provided in the NOFA, Persons receiving or benefiting from HTF funds that are provided as a Loan, as determined by the Department, may not have any outstanding judgments and/or liens on the property.

*§51.6. Administrator Eligibility and Requirements.*

(a) The following organizations or entities are eligible to participate in HTF programs:

(1) Any eligible entity listed in §2306.202 of the Texas Government Code; or

(2) Other eligible entities approved by the Department, such as, but not limited to colleges, universities, institutions of higher education and other public agencies.

(b) Ineligible Administrators. The following violations may cause a Participant, and any Applications they have submitted, to be ineligible to participate in programs or receive funding:

(1) Administrators that have failed to make timely payment on fee commitments or on debt instruments held by the Department and for which the Department has initiated formal collection actions; and

(2) Administrator that have been debarred by HUD or the Department.

(c) Current or previous noncompliance. Each Administrator will be reviewed for its compliance history by the Department. Administrators found to be in material noncompliance, or otherwise violating the compliance rules of the Department, will be terminated and/or not recommended for future funding.

(d) Administrator must enter into an agreement with the Department in order to be eligible as more fully described in the NOFA.

(e) Determination of annual income. The method used to determine annual income will be provided in the NOFA or Program Manual.

(f) Procurement. Administrators must comply with all applicable state, and local laws, regulations, and ordinances for making procurements with HTF funds.

(g) Administrators may not retain any program income generated through the operation of a HTF program or activity.

(h) Records retention. Administrator shall be required to maintain records pertinent to an assisted household's files for a period of at least 3 years as required by the Department or, if applicable, Chapter 60, Subchapter A of this title (relating to Compliance Monitoring).

(i) Other requirements may be specified in the NOFA or other release of funds (such a Request for Qualifications (RFQ) or Request for Proposals (RFP)).

*§51.7. General Application Procedures and Requirements.*

(a) The Department will state within a NOFA, Request for Qualifications (RFQ), Request for Proposals (RFP) or other documentation for the release of funding the submission and eligibility guidelines. Applicants to the Department must verify and ensure the accuracy, sufficiency and receipt of all submissions to the Department.

(b) Application Deadline. All Applications must be received during business hours (8:00 a.m. to 5:00 p.m. Central Time) on any business day. Completion and submission of the Application includes the entire Application and any other supplemental forms which may be required by the Department.

(c) The Department reserves the right to reduce the amount requested in an Application based on activity or Project feasibility, underwriting analysis, or availability of funds.

(d) The Department may decline to fund any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

*§51.8. Criteria for Reservation System Funding.*

(a) This section applies to Reservation system programs as further outlined in the applicable NOFA. The NOFA will establish and define the terms and conditions for the submission of Reservations. The NOFA will also indicate the approximate amount of available funds.

(b) An Administrator must have been approved by the Department and must have executed an agreement to be eligible to submit Reservations on behalf of Households. A Reservation containing false information and/or all documents required are not received within ten (10) business days after the Reservation has been entered into the system may be cancelled. The Department staff will review and process all Reservations in the order received. If the Department receives more than one Reservation on the same day, the Reservations will be processed in the order entered into the Reservation system. The Administrator will be notified in writing of the Department's determination.

(c) Reservations of funds are available to the Administrator on first-come, first-served basis. In all cases the Administrator must register each household as outlined in the NOFA. The Administrator may enter additional Reservations after a loan has closed.

(d) Reservations received by the Department in response to a NOFA will be handled in the following manner:

(1) The Department will accept Reservations until all funds under the NOFA have been committed or the availability of funds expires. The Department may limit the eligibility of Reservations in the NOFA.

(2) Each Reservation will be assigned a Received Date based on the date and time the Reservation was entered into the HTF Reservation System. Each will be reviewed in accordance with the NOFA.

(3) Reservations and/or applications submitted on behalf of a Household must comply with all applicable HTF requirements or regulations established in these rules. Reservations and/or applications submitted on behalf of a Household that do not comply with such requirements will be disqualified. The Administrator will be notified in writing of any cancelled and/or disqualified Reservations and/or Applications submitted on behalf of an Applicant.

(4) Administrative Deficiencies. If a Reservation contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Reservation, the Department staff may request clarification or correction of such Administrative Deficiencies. The Department staff may request clarification or correction in a deficiency notice in the form of an email, facsimile or a telephone call to the Administrator advising that such a request has been transmitted. An Administrator may not change or supplement a Reservation in any manner after submission, except in response to a direct request from the Department.

(5) Prior to approval, the Department may decline to fund any Reservation entered into the Reservation system if the proposed housing activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Reservation which are entered, and may decide it is in the Department's best interest to refrain from committing the funds. If the Department has approved the Applicant, but the Administrator and/or Household has not complied with all the program rules and guidelines, the Department may suspend funding until the Administrator and/or Household has satisfied all requirements of HTF.

(e) A Reservation of funds may be subject to cancellation if all required documents are not submitted to the Department within ten (10) business days of the date the registration was entered into the Reservation system and/or if the performance benchmarks outlined in these HTF rules are not adhered to. Submission of a Reservation on behalf of a Household does not guarantee funding.

(f) Maximum Pending Setups. At any one time, the Administrator may have up to ten (10) unapproved Setups awaiting approval ("pending") in the Reservation System. If the Administrator has the maximum ten Setups pending, new Setups will only be reviewed by the Department once an existing unapproved Setup becomes a Reservation (if approved) or is cancelled.

(g) Modification of Reservation. After a Reservation has been secured and the Household has been approved to participate in HTF, the Administrator must notify the Department of any changes to the Setup, such as a cancellation, change in the sales price, or change in the loan amount. The Administrator will not be permitted to change, exchange, replace or switch Households once the Reservation has been approved; unless construction has commenced and one of the following events has occurred: death, illness, divorce, loss of income, nonperformance by the Household or for other acceptable reasons, as approved by the Department, where the Household is unable to perform.

(h) Once a Reservation has been approved, the Department may grant one forty-five (45) day extension of required benchmarks due to extenuating circumstances that were beyond the Administrator's control. If the Administrator cannot meet the required benchmarks after the forty-five (45) day extension, the Reservation will be cancelled. If funds are available, another Reservation on the same Household the Administrator must submit an updated Application to ensure the Household still meets all guidelines and requirements for the NOFA.

*§51.9. Loan, Lien and Mortgage Requirements.*

(a) The requirements in this section shall apply to HTF Loans unless otherwise provided in the NOFA or waived by the Department.

(b) Lien position requirements:

(1) A loan made by the Department shall be secured by a first (1st) lien on the real property if the Department's loan is the largest Amortized, repayable loan secured by the real property; or

(2) The Department may accept a parity lien position if the original principal amount of the leveraged loan is equal to or greater than the Department's loan; or

(3) The Department may accept a subordinate lien position if the original principal amount of the leveraged loan is at least $1,000 or greater than the Department's loan. However liens related to other subsidized funds provided in the form of grants and non-amortizing loans, such as deferred payment or forgivable loans, must be subordinate to the Department's loan.

(c) Sanctions/Deobligation. The Department will apply its Administration Rules of this title.

(d) Encumbrances.

(1) Real property taxes assessed on the housing unit must be current and/or the household must be participating in an approved payment plan with the taxing authority.

(2) The property must not be encumbered with tax liens or child support liens.

(3) The Department may require the owner to be current on any existing mortgage loans or home equity loans.

(e) Affordability periods.

(1) In the event that the housing unit ceases to be the Principal Residence, the forgiveness of the loan or grant agreement will cease.

(2) If a housing unit transfers by devise, descent or operation of law upon the death of the assisted homeowner, the Loan may be forgiven at the discretion of the Department.

*§51.10. Property Guidelines and Related Issues.*

(a) The requirements in this section shall apply unless otherwise provided in the NOFA.

(b) If the Administrator is utilizing HTF funds to construct the home they must conform to §2306.514 of the Texas Government Code.

(c) All work performed that utilizes HTF funds must meet HUD Housing Quality Standards (HQS), at a minimum, as well as other property standards required in the NOFA.

*§51.11. Waiver.*

The Board, in its discretion and within the limits of the law, may waive any one or more of the requirements of this chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies, Chapter 2306, or for good cause, as determined by the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102505
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 475-3916

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# PART 5. OFFICE OF THE GOVERNOR, ECONOMIC DEVELOPMENT AND TOURISM DIVISION

## CHAPTER 176. ENTERPRISE ZONE PROGRAM

**10 TAC §§176.1 - 176.5**

The Economic Development and Tourism Division (EDT) of the Office of the Governor proposes the amendment of Title 10, Part 5, Chapter 176 (Enterprise Zone Program), §§176.1 - 176.5. The amendments seek to clarify definitions, include compliance reporting requirements, delete obsolete language, and allocate project designations in an orderly and equitable manner.

The proposed amendment to §176.1 relating to the definition of a capital investment clarifies that in order to receive an incentive, expenditures must be made for capital assets that are an integral part of the business' operations. The proposed amendment further clarifies the types of expenditures that are allowed to be claimed as a qualified capital investment.

The proposed amendment to §176.1 changes the definition of a concurrent designation to reflect the change in statute that the designations must occur at the same qualified site rather than only allowing concurrent designations in an enterprise zone; provides a definition of an undocumented worker in compliance with

Texas statutory requirements; and adds a provision to determine application fees for the program.

The proposed amendment to §176.2 eliminates references to empowerment zones, enterprise communities and renewal communities, which are federal designations that no longer exist; removes language regarding local incentives offered exclusively in an enterprise zone to reflect change in statute; and removes language regarding additional local incentives to reflect change in statute.

The proposed amendment to §176.3 clarifies that the applicant governing body (city or county) must be in compliance with the requirements of the program; updates the rules to reflect legislative changes to the Texas Enterprise Zone Act by increasing to nine the number of project designations for which a city or county with a population of 250,000 or more may apply; increasing to six the number of project designations for which a city or county with a population of less than 250,000 can apply; eliminating bonus project designations, given the increase of project designations allocated per applicant; limiting the number of project designations that are approved to twelve per application round to prevent all of the designations from being used in a single round and to allow designations to be available for the entire biennium; and allowing up to nine designations to be used for projects that would create a significant number of new jobs and make a substantial capital investment.

The proposed amendment to §176.4 corrects the application fee ($500) addressed earlier in the rules; clarifies the name of the payee (Office of the Governor); adds a requirement for identifying the applicant; clarifies that the application and fee must be received by the application deadline; deletes obsolete references to enterprise zones prior to September 1, 2003; includes statutory reporting requirements regarding employment of undocumented workers; and clarifies the location of concurrent designations.

The proposed amendment to §176.4 removes language regarding qualified business certification and eliminates language related to the requirement for a certificate of occupancy.

The proposed amendment to §176.5 removes the requirement that the Economic Development Bank certify qualified businesses that were approved before September 1, 2003, annually since all of these business have completed their program eligibility; eliminates the option for a nominating body to issue a report on the qualified business at the beginning of a project; and changes the recipient of the Qualified Business Benefit Request Status Report from the Bank to the Comptroller to accurately reflect the responsibilities of the Comptroller to determine capital investments, jobs created and/or retained and ultimately the qualified business' eligibility for sales and use tax refunds.

Aaron Demerson, Executive Director of EDT, has determined that for the first five-year period following the amendment of these rules: (1) there will be no fiscal implications for state or local government as a result of amending these rules; and (2) the public benefit anticipated as a result of amending these rules will be more efficient processes and procedures. There will be no anticipated economic cost to persons or businesses resulting from the amendments of these rules.

Comments on the proposed amendments may be submitted to Michael Bryant, Assistant General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711, (512) 463-1788, michael.bryant@governor.state.tx.us. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments of §§176.1 - 176.5 are proposed under Texas Government Code, §2303.051(c), which authorizes the executive director of EDT to adopt rules necessary for the Program; Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies; Texas Government Code, Chapter 481, creating EDT; Texas Government Code, Chapter 489, creating the Economic Development Bank within EDT; and Texas Government Code, Chapter 2303, relating to the Texas Enterprise Zone Act.

No other statutes, articles, or codes are affected by the proposed amendments.

*§176.1. General Provisions.*

(a) (No change.)

(b) Definition of terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (5) (No change.)

(6) Capital investment--Money paid to purchase capital assets to be used in the regular conduct of the business or activity at the qualified business site, or fixed assets including but not limited to land, buildings, labor used to construct or renovate a capital asset, furniture, manufacturing machinery, computers and software, or other machinery and equipment. Expenditures for routine and planned maintenance required to maintain regular business operations is not considered qualified capital investment. Property that is leased under a capitalized lease is considered a qualified capital investment but property that is leased under an operating lease is not considered a qualified capital investment.

(7) (No change.)

(8) Concurrent designation--Two or more enterprise project designations for the same qualified business at the same qualified business site [~~in the same enterprise zone~~] for separate projects or activities, with overlapping designation periods.

(9) - (25) (No change.)

(26) Undocumented worker--An individual who, at the time of employment, is not:

(A) lawfully admitted for permanent residence to the United States; or

(B) authorized under law to be employed in that manner in the United States.

(c) - (d) (No change.)

(e) Fees. On a regular basis, the bank will review all application fees with regard to the program and make adjustments as needed to further the purposes of the program.

*§176.2. Participation in the Program.*

Participation. A local government wishing to participate in the program must submit to the Bank the following:

(1) (No change.)

(2) A certified copy of the ordinance or order, as appropriate, with original signatures that:

(A) (No change.)

[~~(B) lists which enterprise zone block groups, if any, are also reinvestment zones;~~]

(B) [~~(C)~~] outlines the local incentives that are offered in the enterprise zone area or areas within its jurisdiction[~~, with at least one incentive being exclusive to the enterprise zone areas~~];

[~~(D) outlines additional local incentives that are offered in the governing body's jurisdiction;~~]

(C) [~~(E)~~] identifies, by position, a liaison to oversee, communicate and negotiate with the bank, qualified businesses nominated to be enterprise projects, and any other entities effected by the enterprise zone;

(D) [~~(F)~~] states the date a public hearing was conducted with respect to local incentives offered, prior to passing the ordinance or order;

(E) [~~(G)~~] nominates the qualified business for enterprise project designation;

(F) [~~(H)~~] state the type of project requested, i.e. single, double jumbo or triple jumbo enterprise project;

(G) [~~(I)~~] states whether or not the qualified business is located in an enterprise zone[~~, empowerment zone, enterprise community or renewal community~~]; and

(H) [~~(J)~~] is finally adopted no later than the day of the deadline for which the project will be submitted.

(3) - (5) (No change.)

*§176.3. Qualification for Designation of Enterprise Projects.*

(a) The Bank may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) - (4) (No change.)

(5) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the area; [~~and~~]

(6) the designation of the qualified business as an enterprise project will further the public purposes of the Act and significantly benefit the goals of the program which include, but are not limited to, high impact projects or activities, targeted industry clusters and creation of primary jobs; and[~~.~~]

(7) the applicant's governing body is in compliance with the Act.

(b) - (c) (No change.)

(d) Municipalities or counties with a population of 250,000 or more, based on the most recent decennial census, are eligible for up to nine [~~six~~] enterprise project designations during a state biennium based upon availability.

(e) Municipalities or counties with a population of less than 250,000, based on the most recent decennial census, are eligible for up to six [~~four~~] enterprise project designations during a state biennium based upon availability. [~~Once a municipality or county of less then 250,000 based on the most recent decennial census has received four enterprise project designations during a state biennium, the nominating body may submit up to two bonus enterprise project nominations, if there are designations available. Bonus projects will be awarded after all other projects received during the round have been determined for designation, and will be allocated to high-impact projects creating new jobs. The bonus project application must include a local economic impact summary, and describe the impact on the nominating body in terms of local economic objectives, as well as the local Return on Investment outlined in terms of a cost benefit analysis.~~]

(f) The Bank may not allocate more than 12 project designations during a quarterly round unless there were fewer than 12 project designations allocated during a previous round in the biennium to offset the difference. The Bank may allocate the remaining nine designations during any round, and may award a designation to a lower scoring project over and above a higher scoring project if it proposes to create a significant number of new jobs and makes a substantial capital investment. [~~, at its election, withhold up to six enterprise project designations during a round to be disseminated at a later round during the same biennium.~~]

*§176.4. Application for Designation of Enterprise Projects.*

(a) - (b) (No change.)

(c) The applicant shall file with the Bank one original application for designation as an enterprise project. All applications for enterprise project designation must be received by the Office no earlier than one week before, and no later than 5:00 p.m. Central Standard Time, on the first business day of the following months: September, December, March and June. Further, all applications include a [~~application must be accompanied by a $500~~] non-refundable application fee in the form of a certified check or money order made payable to the Office of the Governor [~~Texas Economic Development Bank~~]. The application is not considered to be received unless it is received at the physical location of the Office with [~~and accompanied by~~] the non-refundable application fee submitted under separate cover to Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Enterprise Zone Program, Post Office Box 12828, Austin, Texas 78711. The application fee must clearly show the name of the nominating jurisdiction, as well as the name of the qualified business. Both the application and the application fee must be received by the application deadline. Applications received after a deadline will be returned to the applicant, and must be resubmitted to the Bank in the prescribed timeframe to be considered for designation during the next application deadline.

(d) (No change.)

(e) The application for designation of an enterprise project must contain the following information and documentation, as applicable:

(1) (No change.)

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) - (B) (No change.)

(C) the block group of the primary business address of the qualified business site, verifiable by the local appraisal district[~~, or an enterprise zone approved prior to September 1, 2003, currently still in effect, if applicable, or the federally-designated zone, if applicable~~];

(D) the poverty rate for the block group of the primary business address of the qualified business site, or the poverty rate of the distressed county in which the qualified business site is located [~~or the poverty rate of the enterprise zone approved prior to September 1, 2003, currently still in effect, as applicable~~];

(E) an official census map, which clearly identifies the location of the proposed project and the census area where it is located[~~, or a map of the enterprise zone approved prior to September 1, 2003, currently still in effect, which clearly identifies the location of the proposed project, as applicable~~];

(F) - (G) (No change)

(3) The project. The application must contain the following information and documentation concerning the proposed project:

(A) - (C) (No change.)

(D) commitments from the business that include:

*(i) - (ii)* (No change.)

*(iii)* the percentage of new or additional employees hired to occupy the jobs being claimed for benefit that are residents of any enterprise zone in the state, or that are economically disadvantaged; [~~and~~]

*(iv)* a description of the efforts of the business to develop and revitalize the area as described in the Act, §2303.405(e); and

*(v)* a statement certifying that the business, or a branch, division, or department of the business, does not and will not knowingly employ an undocumented worker.

(f) Multiple concurrent enterprise project designations. A qualified business that currently has an enterprise project designation may apply for an additional enterprise project designation at the same qualified business site [~~in the same enterprise zone~~]. To receive the additional enterprise project designation the governing body must complete an enterprise project application with all of the required nominations and attachments. Additionally, the application must include a breakdown of capital investment and new and/or retained jobs for each designation, clearly delineating what capital investment and jobs will apply to which designation, with timelines for all.

(g) Name change. If the name of a qualified business that has received an enterprise project designation has changed, the Bank may approve the name change for the enterprise project designation. The designated enterprise project must apply for a name change to the Bank no later than 18 months after the enterprise project designation expires, or the business will not be eligible for program benefits. The name change of a project designation by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the last day of the original designation period. The receive Bank approval for a name change, the qualified business must submit through the applicant governing body:

(1) a completed Name Change Application, along with a non-refundable cashiers check or money order made payable to Office of the Governor [~~Texas Economic Development Bank~~], for a processing fee [~~in the amount of $500~~]; and

(2) - (3) (No change.)

(h) Assignment or Assumption. The Bank may approve the assignment or assumption of a state-designated enterprise project that has transferred through a sale to another entity that will commit to continue operations at the qualified business site in the way originally committed within the initial enterprise project application, or which otherwise demonstrates to the satisfaction of the Bank that the assignment or assumption is warranted to avoid disruption of operations and loss of jobs. The transfer of a project designation by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee and which will end on the last day of the original designation period. The designated enterprise project must apply to the Bank, through the appropriate governing body, for designation assignment or assumption no later than 18 months after the enterprise project designation expires, or the business will not be eligible for program benefits. The following must be submitted through the applicant governing body to the Bank:

(1) (No change.)

(2) a completed Enterprise Project Assignment Application, along with a non-refundable cashiers check or money order made payable to Office of the Governor [~~Texas Economic Development Bank~~] for a processing fee [~~in the amount of $500~~]; and

(3) - (7) (No change.)

(i) (No change.)

*§176.5. Monitoring and Reporting Requirements.*

(a) Annual reports and certifications.

(1) - (2) (No change.)

[~~(3) Qualified Business Certification. An enterprise project approved prior to September 1, 2003, must be annually certified by the Bank as a qualified business to receive its state sales and use tax refunds.~~]

(3) [~~(4)~~] Program Annual Report. The information in the governing body annual report, as well as the Comptroller annual report will be used by the Bank to compile an annual report on the program to the governor, legislature and the Legislative Budget Board by January 1 as required by the Act.

(b) Other reports or documents.

(1) Governing Body Designated Project Status Report. The nominating body shall submit a report to the Bank and Comptroller, conducted [~~either at the time a certificate of occupancy is issued, or~~] at the completion of the enterprise project designation period monitoring the qualified business to determine whether the business or project has followed through on any commitments or goals made in the application for enterprise project designation. This information may also be provided through the Governing Body Annual Report.

(2) Qualified Business Benefit Request Status Report. At the time of submittal of a request for a state tax benefit, the qualified business must provide a certified report to the Comptroller [~~Bank~~] of the actual amount of capital investment, as well as the actual number of new and/or retained jobs by category and title.

(3) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102512
Michael Bryant
Assistant General Counsel
Office of the Governor, Economic Development and Tourism Division
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 936-0169

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# TITLE 16. ECONOMIC REGULATION

## PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

## CHAPTER 63. PERSONNEL EMPLOYMENT SERVICES

**16 TAC §§63.1, 63.10, 63.20, 63.21, 63.40, 63.70, 63.80 - 63.82, 63.90**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices*

*of the Texas Department of Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Licensing and Regulation (Department) proposes the repeal of 16 Texas Administrative Code (TAC) Chapter 63, §§63.1, 63.10, 63.20, 63.21, 63.40, 63.70, 63.80 - 63.82, and 63.90 regarding the Personnel Employment Services program.

Senate Bill ("SB") 1168 and House Bill ("HB") 3167, 82nd Legislature, Regular Session (2011), repealed the Department's authority to regulate personnel employment service providers from Chapter 2501, Texas Occupations Code, effective May 20, 2011 (SB 1168) and September 1, 2011 (HB 3167). The rationale included the fact that there were a low number of certificate holders and complaint cases with the Department, and the Department's enforcement authority was limited to taking action against a certificate holder only if it were found to have accepted fees from a client before employment had been secured for the client. Though the Department's regulatory authority has been repealed, Chapter 2501, Texas Occupations Code is still in effect and continues to provide for civil and criminal causes of actions against a personnel employment service provider.

The repeal of the provisions in Texas Occupations Code, Chapter 2501 relating to the Department's authority to regulate the program requires repeal of the rules that implemented these sections of the statute relating to the Personnel Employment Services program. Therefore, the Department proposes to repeal all of the rules under 16 TAC Chapter 63.

William H. Kuntz, Jr., Executive Director, has determined that for each year of the first five-year period the proposed repeal is in effect there will be no direct cost to state or local government as a result of enforcing or administering the proposed repeal. The loss of revenue to the state would not be significant, being approximately $12,000 per year in annual $75 initial or renewal fees for 159 certificate holders.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed repeal is in effect, the public may benefit because of the cessation of costs associated with regulating the industry.

After evaluating the proposed repeal, the Department believes that there will be no adverse economic effect on small and micro-businesses.

Since the agency has determined that the rule will have no adverse economic effect on small businesses, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

Comments on the proposal may be submitted by mail to Caroline Jackson, Legal Assistant Team Lead, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register.*

The repeal is proposed under SB 1168 and HB 3167, 82nd Legislature, Regular Session (2011), which repealed the sections of Texas Occupations Code, Chapter 2501, which authorized the Department to regulate Personnel Employment Services providers; and Texas Occupations Code, Chapter 51, which authorizes the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51 and 2501. No other statutes, articles, or codes are affected by the proposed repeal.

*§63.1. Authority.*

*§63.10. Definitions.*

*§63.20. Certificate of Authority Requirements.*

*§63.21. Certificate of Authority Application Process.*

*§63.40. Security Requirements.*

*§63.70. Responsibilities of the Certificate Holder--General.*

*§63.80. Fees--Original Certificate of Authority.*

*§63.81. Fees--Renewal Certificate of Authority.*

*§63.82. Fees--Duplicate Certificate of Authority.*

*§63.90. Administrative Penalties and Sanctions.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102499
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-7348

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER B. NATURAL GAS

**34 TAC §3.23**

The Comptroller of Public Accounts proposes an amendment to §3.23, concerning credits for qualifying low producing wells. The amendment is proposed to provide clarification for filing an application for approval of the credit.

Subsection (a)(4) is amended to clarify the use of Texas Railroad Commission records to determine production volumes from a well. Subsection (b)(2) is amended to clarify the type of supporting documentation needed to approve an application.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by providing additional guidance to taxpayers seeking tax credits for qualifying low producing natural gas wells. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The proposal implements Tax Code, §201.059.

*§3.23. Credits for Qualifying Low Producing Wells.*

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Railroad Commission of Texas.

(2) Operator--The person responsible under law or commission rules for the physical operation of a wellbore or lease.

(3) Average Taxable Price of Gas--The previous three month average price of gas using a price index listed in Tax Code, §201.059(b). The average will be computed by taking the closing price of gas each market day and dividing it by the total market days in the three-month period. This average price will then be adjusted to 2005 dollars.

(4) Qualified Low Producing Well--A gas well that produces no more than 90 mcf of gas per day during the three-month period prior to the beginning date of the exemption. For purposes of qualifying the well, the production per day is determined by using the monthly well production report made to the commission and by also using any adjustments made to the report by the commission.

(b) For each well qualifying under this section, the comptroller will require the following information from the operator of the well.

(1) Copies of the monthly production reports made to the commission for the lease for the three-month period.

(2) If the lease is commingled, the operator must provide copies of the monthly production reports made to the commission for the commingled lease and a production allocation for each lease in the commingling permit with supporting documentation for the three-month period prior to the exemption beginning date. Supporting documentation can include, but is not limited to, the Texas Railroad Commission G-10 Gas Well Status Report for the leases, or an engineering study on the formations in the wellbore, or metering tests done on the leases.

(3) A completed comptroller exemption application for the well.

(4) The date that the lease met the three-month production limitations that qualify the well as a low-producing well.

(5) A statement as to whether tax has been paid on the gas for periods after the effective date of the exemption and the name of the party that paid the tax.

(c) The monthly average taxable price of gas will be published in the *Texas Register* the month following the actual production month. This publication will notify the taxpayer of the eligibility of the exemption in the month prior to the due date of the report. Tax Code, §201.059(c), (d), and (e) will be used to define the credit applicable for each reporting month.

(1) If the monthly average taxable price of gas is more than $3.50 per mcf, there will be no exemption for that reporting month.

(2) If the monthly average taxable price of gas is more than $3.00 per mcf, but not more than $3.50 per mcf, there will be a 25% credit for gas sold from a qualified well for that reporting month.

(3) If the monthly average taxable price of gas is more than $2.50 per mcf, but not more than $3.00 per mcf, there will be a 50% credit for gas sold from a qualified well for that reporting month.

(4) If the monthly average taxable price of gas is not more than $2.50 per mcf, there will be a 100% credit for gas sold from a qualified well for that reporting month.

(d) If the tax is paid at the full rate provided by Tax Code, Chapter 201, on gas produced on or after the effective date of the tax exemption but before the date the comptroller approves an application for the tax exemption, the operator is entitled to a credit on taxes due under Tax Code, Chapter 201, in an amount equal to the credit approved for that period. To receive a credit, the operator or the party remitting the tax must apply to the comptroller by filing amended reports. If a party other than the operator has remitted the tax, the operator must provide the party that remitted the tax a copy of the approved comptroller application form that qualified the well for the tax exemption.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102477
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 475-0387

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# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## PART 3. TEXAS YOUTH COMMISSION

### CHAPTER 85. ADMISSION, PLACEMENT, RELEASE, AND DISCHARGE

### SUBCHAPTER D. PROGRAM COMPLETION AND RELEASE

**37 TAC §85.57**

The Texas Youth Commission (TYC) proposes an amendment to §85.57, concerning Release Review Panel. The amended rule will include completion of statutorily-required or court-ordered programs as a factor to be considered by the Panel in its determination of whether to release or discharge a youth. Additionally, the amended section will no longer refer to evidence of youth behavior solely in terms of the number and frequency of rule violations.

The amended rule will now include deadlines for the Panel to reach its decisions. Additionally, the rule will establish that a decision to release a youth with the most serious category of committing offense is subject to final approval by the executive director. Minor clarifications and title updates have also been made throughout the rule.

Janie Ramirez Duarte, Chief Financial Officer, has determined that for the first five-year period the section is in effect, there will be no significant fiscal impact for state or local government as a result of enforcing or administering the section.

Toysha Martin, General Counsel, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the provision of policies that provide for the transparency, consistency, and objectivity of the Panel's composition, procedures, and decisions. The anticipated public benefit will also involve providing for public safety by ensuring the highest level of review for decisions involving the release or discharge of youth with the most serious committing offenses.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to policy.proposals@tyc.state.tx.us.

The amended section is proposed under (1) Human Resources Code §61.034, which provides TYC with the authority to adopt rules appropriate to the proper accomplishment of its functions; and (2) Human Resources Code §61.0815, which requires TYC to establish rules for a panel whose function is to review and determine whether a child who has completed his/her minimum length of stay should be discharged from the custody of TYC, be released under supervision, or remain in the custody of TYC for an additional period of time.

The proposed rule implements Human Resources Code, §61.034.

*§85.57. Release Review Panel.*

(a) (No change.)

(b) Applicability. This rule applies to all youth committed to the TYC without a determinate sentence who have completed the minimum length of stay and have not been approved for release under §85.55 of this title. [~~have not been released to parole or discharged from TYC custody.~~]

(c) Definitions. Unless otherwise specified in this subsection, see §85.1 of this title for definitions of terms used in this rule. The following terms, as used in this rule, have the following meanings unless the context clearly indicates otherwise.

(1) (No change.)

[~~(2) Discharge--legal release from the legal jurisdiction of TYC.~~]

(2) [~~(3)~~] Extension Length of Stay--a period of time in addition to the minimum length of stay that a youth is required to remain in residential placements. An extension length of stay may only be assigned by the Release Review Panel in accordance with provisions of this rule.

[~~(4) Individual Risk and Protective Factors--the dynamic characteristics of a youth's environment, behavior, and mental processes that contribute to the likelihood of further delinquent activity (risk factors) or that contribute to the prevention of delinquent activity (protective factors).~~]

(3) [~~(5)~~] Major Rule Violation--a violation in the most serious category of rule violations for residential facilities, as listed in §95.3 of this title.

[~~(6) Minimum Length of Stay--the minimum period of time a youth is required to remain in residential placements. The minimum length of stay is assigned upon initial commitment, recommitment, or revocation of parole.~~]

(4) [~~(7)~~] Progress Review Team--the multi-disciplinary team (as defined in §85.1 of this title) [~~TYC residential placement staff~~] or TYC contract placement monitoring staff who are designated [~~by the facility~~] to [~~meet and~~] assess a youth's progress in treatment programming.

[~~(8) Release--movement to parole supervision.~~]

(5) [~~(9)~~] Release Review Panel (or Panel)--the TYC Central Office staff appointed to determine if a youth who has completed his/her minimum length of stay will be discharged, released, or given an extended length of stay.

(6) [~~(10)~~] Residential Placement--a high or medium restriction facility, as defined in §85.27 of this title.

(d) General Provisions.

(1) Panel Members.

(A) The Panel will consist of an odd number of members appointed by the executive director [~~commissioner~~] for terms of at least two years.

(B) (No change.)

(2) Evidence used by the Panel.

(A) (No change.)

(B) Evidence of factors other than rule violations may be considered by the Panel irrespective of its form.

(C) [~~(B)~~] A youth, the parents/guardian of a youth, victims of a youth, or any advocate chosen by a youth may submit information for the Panel's consideration. Information and arguments should be submitted to the Panel in writing on or before the expiration of the youth's minimum length of stay, or if applicable, expiration of the extension length of stay. A youth may request assistance from any TYC staff member, volunteer, or advocate in communicating with the Panel.

(D) [~~(C)~~] A parent/guardian, victim, or person representing a youth may make a written request for personal communication with a member of the Panel on or before the expiration of the youth's minimum length of stay, or if applicable, expiration of the extension length of stay. The time, place, and manner of communication will be established by the Panel.

(E) [~~(D)~~] The Panel may, at its discretion, interview the youth or any other individual who may have information relevant to the youth's rehabilitation needs. When notified that a youth has a representative assisting him/her with the review, the panel will notify the representative of any scheduled interviews with the youth prior to conducting the interview. A youth's refusal to speak to the Panel will not be held against the youth when making the release decision.

(F) [~~(E)~~] To be considered as a factor in a determination to extend a youth's stay, a violation of the rules of conduct must have been proven via due process which provides advance written notice of the alleged violation, a written statement by the fact finder of the evidence relied upon and the reason for the decision, an opportunity to call witnesses and present evidence, and a neutral decision maker.

[~~(F) Evidence of factors other than rule violations may be considered by the Panel irrespective of its form.~~]

(3) Deadline for Release or Discharge.

(A) If the Panel determines that a youth's length of stay should not be extended, TYC must release or discharge the youth within 15 calendar days after the date of the Panel decision.

(B) A request for reconsideration of a release or discharge order may temporarily delay the release or discharge of the youth until the Panel reaches a decision on the request in accordance with timeframes established in subsection (g)(7) of this section.

(e) Completion of Minimum Length of Stay.

(1) Referral by the Progress Review Team. At least 30 calendar days prior to the expiration of a youth's minimum length of stay, the progress review team will determine whether or not the youth meets program completion criteria as established in §85.55 of this title, or is likely to meet such criteria on or before his/her minimum length of stay date. [~~release criteria.~~] If the progress review team determines the youth does not meet program completion criteria, is not likely to meet program completion criteria on or before his/her minimum length of stay date, [~~release criteria~~] or recommends discharge of the youth, the following actions will occur:

(A) - (B) (No change.)

(C) Before [~~On or before~~] the date the minimum length of stay expires, the progress review team will submit to the Panel any information relevant to the decision on whether the youth is in need of additional rehabilitation in a residential placement.

(2) Panel Decision.

(A) Not later than 30 calendar days after expiration of the youth's minimum length of stay, the [~~The~~] Panel will make a determination as to whether TYC will discharge the youth, release the youth, or extend the youth's stay in a residential placement.

(B) (No change.)

(C) The Panel's determination may include assessments of factors including, but not limited to, the following:

*(i)* (No change.)

*~~(ii)~~* ~~length of time in a residential program relative to the youth's conduct;~~]

*(ii)* [~~(iii)~~] degree and quality of the youth's participation in available treatment programs;

*(iii)* [~~(iv)~~] behavior during the youth's length of stay; and [~~as evidenced by the number and frequency of rule violations confirmed through due process, with special consideration given to:~~]

*~~(I)~~* ~~serious rule violations, aggressive incidents, or criminal conduct; and~~]

*~~(II)~~* ~~incidents that demonstrate conduct similar to the youth's criminal conduct prior to TYC commitment.~~]

*(iv)* participation in and/or completion of statutorily required or court-ordered treatment programs.

(D) If the Panel extends the length of a youth's stay, the Panel must:

*(i)* (No change.)

*(ii)* provide a written report explaining the reason for the extension to the youth, parent/guardian, and any designated advocate. The report must be provided within ten [~~10~~] calendar days after the date of the Panel decision.

(E) For youth with committing offenses classified as Type A - Violent prior to February 1, 2009, or as high severity, a Panel determination to release or discharge the youth is subject to final approval by the executive director.

(f) Completion of Extension Length of Stay.

(1) Facility Review. Prior to the completion of the extension length of stay, the progress review team will review whether the youth has met or is likely to meet program completion criteria on or before the completion of his/her extension length of stay. If the youth has not met or is not likely to meet program completion criteria, the facility will refer the youth's case to the Panel.

(2) [~~(1)~~] Notification. At least seven calendar days prior to the expiration of an extension length of stay, the Panel will notify the youth, the youth's parents/guardian, and victim(s) that the youth's case is pending review before the Panel.

(3) [~~(2)~~] Panel Decision. Not later than 30 calendar days after expiration of the youth's extension length of stay, the [~~The~~] Panel will conduct a review and make a determination to discharge the youth, release the youth, or extend the length of stay in a residential placement. The Panel must mail notification to all parties of the decision within ten [~~10~~] calendar days from the date of the decision.

(g) Request for Reconsideration of an Extension Order.

(1) - (5) (No change.)

(6) The Panel may, at its discretion, accept requests for reconsideration other than those described in paragraph (5) of this subsection.

(7) For reconsideration requests accepted by the Panel, the Panel will provide a written reply to all parties with an explanation of the Panel's decision no later than 15 calendar days after receipt of the request. The reply will include an indication that the Panel has considered the information submitted in the request.

(8) [~~(7)~~] A reconsideration decision by the Panel exhausts all administrative remedies regarding release after expiration of the minimum length of stay.

(h) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102481
Cheryln K. Townsend
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 424-6014

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# TITLE 43. TRANSPORTATION

# PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

## CHAPTER 1. MANAGEMENT

## SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

**43 TAC §1.1, §1.2**

The Texas Department of Transportation (department) proposes amendments to §1.1, Texas Transportation Commission, and §1.2, Texas Department of Transportation, concerning organization and responsibilities.

EXPLANATION OF PROPOSED AMENDMENTS

Title 43, Texas Administrative Code, §1.1 and §1.2 essentially track statutory language and provide basic information concerning the duties of the Texas Transportation Commission (commission) and the department. Several Acts of the 82nd Legislature, Regular Session, 2011, made various changes to those duties. Therefore, §1.1 and §1.2 must be revised to reflect those changes. The bill numbers cited in this preamble reference the numbers assigned to bills by the 82nd Legislature during its Regular Session held in 2011.

Amendments to §1.1, subsection (b)(1)(J), update the entities for which commission approval of a toll project that is to become a part of the state highway system is not required under Transportation Code, §362.055. Section 126 of H.B. No. 2702, which updates statutory population brackets to take into account the new data contained in the 2010 federal census, amends Transportation Code, §362.055 changing the population of an excepted county from more than 1.5 million to more than 2 million. The amendments to subparagraph (J) change the county population in accordance with the statutory changes. The language added in subparagraph (J) is intended to more clearly inform the reader of the other exceptions found in Transportation Code, §362.055.

Amendments to §1.1 delete subsection (b)(1)(U), relating to the Trans-Texas Corridor, because H.B. No. 1201 repealed the authority for the establishment and operation of the corridor. The amendments also delete subsection (b)(1)(W), relating to a report to the legislature about statutory changes to improve the operation of the department, because Section 99 of S.B. No. 1420 repealed Transportation Code, §201.0545, which was the basis for subparagraph (W). The amendments to §1.1 add a new subsection (b)(1)(V), which provides that the commission will establish a compliance program that is required by Transportation Code, §201.451, as added by Section 15 of S.B. No. 1420. The subparagraphs of subsection (b)(1) are redesignated as required to accommodate the changes made to that paragraph.

Amendments to §1.1 delete subsection (d)(1)(C) and (E), relating to reports to the governor, and subsection (d)(1)(F), relating to the review of and recommended changes to the department's organizational structure. Those requirements were contained in Transportation Code, §201.053(b), and were repealed by Section 24 of S.B. No. 1179. The amendments also delete subsection (d)(1)(K), relating to a report to the governor and the legislature on the commission's legislative recommendations about the operation of the department. That provision was based on Transportation Code, §201.0545, which was repealed by Section 99 of S.B. No. 1420. The subparagraphs of subsection (d)(1) are redesignated accordingly.

Amendments to §1.1, subsection (d)(3), reflect the changes made in Section 9 of S.B. No. 656. That bill abolished the Coastal Coordination Council and requires the commissioner of the General Land Office to establish the Coastal Coordination Advisory Committee. Natural Resources Code, §33.2041(b)(1)(F), requires the chair of the commission to designate a representative of the department to that committee. Paragraph (3) is revised accordingly.

Amendments to §1.2, subsection (a)(2), indicate that the executive director of the department will employ a chief financial officer of the department. Section 7 of S.B. No. 1420 adds new Transportation Code, §201.1075, relating to the functions and duties of the department's chief financial officer. The amendments to subsection (a)(2) recognize the existence of that statutorily required position.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be that the current practices and statutory requirements are accurately reflected in the rules of the department and commission. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.1 and §1.2 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Natural Resources Code, §33.2041, Transportation Code, §§201.1075, 201.451, and 362.055.

*§1.1. Texas Transportation Commission.*

(a) Commission.

(1) The Texas Department of Transportation is governed by the Texas Transportation Commission, consisting of five commissioners appointed by the governor with the advice and consent of the senate.

(2) The governor designates one commissioner as the chair of the commission.

(b) Commission responsibilities.

(1) The Texas Transportation Commission, with the advice and recommendations of the executive director, will:

(A) plan and make policies for the location, construction, and maintenance of a comprehensive system of state highways and public roads;

(B) lay out, construct, maintain, and operate a modern state highway system;

(C) develop a statewide transportation plan that contains all modes of transportation, including highways and turnpikes, aviation, mass transportation, railroads and high-speed railroads, and water traffic;

(D) award contracts necessary for the improvement of the state highway system, as provided by Transportation Code, Chapter 223, and §§9.10 - 9.21 of this title (relating to Highway Improvement Contracts);

(E) encourage, foster, and assist in the development of public and mass transportation in the state;

(F) encourage, foster, and assist in the development of aeronautics in the state and encourage, aid, and assist in the establishment of airports, airstrips, and air navigational facilities in the state;

(G) fulfill the local sponsorship requirements of the Gulf Intracoastal Waterway as agent for the state;

(H) provide for the development and operation of toll projects on the state highway system;

(I) approve a toll project constructed by a private entity or corporation if the project connects to the state highway system;

(J) approve the construction of a toll project by a governmental or private entity other than a county with a population of more than 2 [~~1.5~~] million people, a local government corporation created by such a county, or a regional tollway authority, if it is to become a part of the state highway system;

(K) appoint an internal auditor for the department who shall report directly to the commission on the conduct of departmental affairs;

(L) adopt rules for the operation of the department;

(M) divide the department into districts to accomplish the department's functions and the duties assigned to it;

(N) carry out such transportation functions as may be delegated by the governor pursuant to applicable federal law;

(O) establish policy necessary to carry out the duties and functions of the department and the commission;

(P) administer the state infrastructure bank;

(Q) organize the department into divisions to accomplish the department's functions and duties assigned to it;

(R) approve recommendations for changes to the department's organizational structure submitted by the chair of the commission under subsection (d)(1)(F) of this section;

(S) plan and make policies for the location, construction, maintenance, and operation of rail facilities;

(T) administer the Texas Mobility Fund as a revolving fund to provide a method of financing the construction, reconstruction, acquisition, and expansion of state highways, and for the construction of other transportation projects;

[~~(U) designate and provide for the development of a statewide system of multi-modal transportation facilities known as the Trans-Texas Corridor;~~]

(U) [~~(V)~~] approve the creation of regional mobility authorities;

(V) establish a compliance program; and

[~~(W) consider ways in which the department's operations may be improved and periodically report to the legislature concerning potential statutory changes that would improve the operation of the department; and~~]

(W) [~~(X)~~] perform other duties required by law.

(2) The commission may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1) of this subsection to the executive director. The executive director may further delegate such functions to one or more employees of the department.

(c) Attendance at meetings. Each commissioner shall: attend at least half of the regularly scheduled meetings that the commissioner is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

(d) Chair of the commission.

(1) The chair of the commission, with the advice and recommendations of the executive director and the executive director's staff, shall:

(A) preside over commission meetings, make rulings on motions and points of order, and determine the order of business;

(B) represent the department in dealing with the governor;

[~~(C) report at least quarterly to the governor on the state of affairs at the department;~~]

(C) [~~(D)~~] report suggestions made by the governor for departmental operations to the commission;

[~~(E) report to the governor on efforts to maximize the efficiency of departmental operations through the use of private enterprise;~~]

[~~(F) periodically review the department's organizational structure and submit recommendations for structural changes to the governor, the commission, and the Legislative Budget Board;~~]

(D) [~~(G)~~] designate one or more employees of the department as a civil rights division of the department and receive regular reports from the division on the department's efforts to comply with civil rights legislation and administrative rules;

(E) [~~(H)~~] create subcommittees, appoint commissioners to subcommittees, and receive the reports of subcommittees to the commission as a whole;

(F) [~~(I)~~] appoint a commissioner to act in the chair's absence;

(G) [~~(J)~~] serve as the departmental liaison with the governor and the Office of State-Federal Relations to maximize federal funding for transportation;

[~~(K) on behalf of the commission, report to the governor, the lieutenant governor, the speaker of the house of representatives, and the presiding officer of relevant legislative committees on legislative recommendations adopted by the commission and relating to the operation of the department;~~]

(H) [~~(L)~~] oversee the preparation of an agenda for each commission meeting and ensure that a copy is provided to each commissioner at least seven days before a regular meeting; and

(I) [~~(M)~~] perform any other duties assigned by law.

(2) The chair may, consistent with applicable law, delegate one or more of the functions listed under paragraph (1) of this subsection to the executive director, who in turn may further delegate such functions to one or more employees of the department.

(3) The chair will designate a person to [~~or a commissioner designated by the chair shall~~] serve as a representative of the department on [~~member of~~] the Coastal Coordination Advisory Committee [~~Council~~].

*§1.2. Texas Department of Transportation.*

(a) Executive director.

(1) The commission will elect an executive director for the department who shall be skilled in transportation planning and development and in organizational management. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the commission.

(2) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain such administrative staff as he or she deems appropriate, including the chief financial officer of the department.

(3) The executive director shall:

(A) serve the commission in an advisory capacity, without vote;

(B) submit quarterly, annually, and biennially to the commission detailed reports of the progress of public road construction, public and mass transportation development, and detailed statement of expenditures;

(C) hire, promote, assign, re-assign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department;

(D) notify the chair of grounds for removal of a commissioner if the executive director knows that a potential ground for removal exists, or, if the potential ground for removal relates to the chair, notify another commissioner;

(E) under the direction and with the approval of the commission, prepare a comprehensive plan providing a system of state highways; and

(F) perform other responsibilities as required by law or assigned by the commission.

(4) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (3)(B) - (F) of this subsection to the staff of the department.

(b) Department staff. The staff of the Texas Department of Transportation, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the commission by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and commissioners administrative support necessary to perform their respective duties and responsibilities, including:

(A) assigning staff to assist commissioners;

(B) providing necessary office space and equipment;

(C) furnishing in-house legal counsel;

(D) providing all information and documents necessary for the commission to effectively perform its responsibilities; and

(E) preparing an agenda under the direction of the chair, providing notice, and transcribing commission meetings and hearings as required by the Texas Open Meetings Act, Government Code, Chapter 551; and

(3) performing all other duties as prescribed by law or as assigned by the commission.

(c) Divisions. Consistent with commission direction provided under §1.1(b)(1)(Q) and (R) of this subchapter, the executive director shall organize the department into headquarters operating divisions and offices reflecting the various functions and duties assigned to the department, and shall designate a division or office director who shall administer each division or office.

(d) Districts.

(1) District office. The department is divided into geographical districts, each containing one district office. Each district is administered by a district engineer who is a registered professional engineer and is appointed by the executive director.

(2) Area office. A district contains one or more area offices, each of which is responsible for carrying out the department's primary functions at the local level for a designated geographical area. Each area office is normally administered by an area engineer who shall be a registered professional engineer.

(3) Project office. A district may contain one or more project offices, which is normally responsible for a specific project within an area.

(e) Regional Support Centers. The department has four regional support centers, which provide operational and project development support functions to the districts. The regional support centers are located in Fort Worth, Houston, San Antonio, and Lubbock.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102482
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-8683

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## CHAPTER 2. ENVIRONMENTAL POLICY
## SUBCHAPTER A. ENVIRONMENTAL REVIEW AND PUBLIC INVOLVEMENT FOR TRANSPORTATION PROJECTS

**43 TAC §§2.1, 2.2, 2.5, 2.12, 2.16, 2.19**

The Texas Department of Transportation (department) proposes amendments to §2.1, General; Emergency Action Procedures, §2.2, Definitions, §2.5, Public Involvement, §2.12, Environmental Impact Statement (EIS), §2.16, Mitigation, and §2.19, Rail Transportation Project, all concerning Environmental Review and Public Involvement for Transportation Projects.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to remove all provisions in Chapter 2 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in department's rules relating to the Trans-Texas Corridor.

Amendments to §2.1, General; Emergency Action Procedures, remove the reference in subsection (b)(2) to a construction or operation project of a facility that is part of the Trans-Texas Corridor and to Transportation Code, Chapter 227, which related to the corridor and was repealed by H.B. No. 1201. The amendments to subsection (c) remove all references in that subsection to sections in Transportation Code, Chapter 227.

Amendments to §2.2, Definitions, remove the definition of Trans-Texas Corridor and renumber the following definition appropriately.

Amendments to §2.5, Public Involvement, remove subsection (e)(9) relating to the notice of availability of a Final Environmental Impact Statement (FEIS) for a Trans-Texas Corridor project and redesignate the following paragraph accordingly.

Amendments to §2.12, Environmental Impact Statement (EIS), remove subsection (e)(2) relating to the contents of a Draft Environmental Impact Statement (DEIS) for a Trans-Texas Corridor project and redesignate the following paragraphs accordingly.

Amendments to §2.16, Mitigation, remove subsection (b)(6), which provides for compensatory mitigation of an adverse environmental impact resulting from a Trans-Texas Corridor project, and redesignate the following paragraph accordingly.

Amendments to §2.19, Rail Transportation Project, remove the references to Transportation Code, Chapter 227 in subsections (a) and (c).

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to have the rules accurately reflect the statutory law. There are no anticipated economic costs for persons required to comply with the sections as proposed.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§2.1, 2.2, 2.5, 2.12, 2.16, and 2.19 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

*§2.1. General; Emergency Action Procedures.*

(a) (No change.)

(b) Applicability; Exception.

(1) (No change.)

(2) Transportation project. A transportation project is a highway improvement, rest area, aviation, toll project, public transportation, rail transportation project, ferry landing project, ferry maintenance, or transportation enhancement[~~, or a project for the construction or operation of a facility that is a part of the Trans-Texas Corridor~~]. A highway improvement project is a highway construction or maintenance project under one or more of Transportation Code, Chapters 201, 203, 221, 223, [~~227,~~] or 228.

(3) (No change.)

(c) Purpose. This subchapter implements the requirements of Transportation Code, §91.033, §91.034, §201.604, §201.607, §201.610, §201.617, §203.021, and §203.022[~~, §227.004, §227.013, §227.027, and §227.028~~]. Also, the requirements in this chapter follow the requirements of the National Environmental Policy Act, 42 United States Code §§4321 et seq., 23 United States Code §109(h), and federal rules adopted under those laws. For a federal-aid transportation project, the subchapter sets forth additional requirements the department shall follow in order to comply with the National Environmental Policy Act and federal rules adopted under that law.

(d) - (h) (No change.)

*§2.2. Definitions.*

The following words and terms, when used in this subchapter and Subchapters B and C of this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (46) (No change.)

[~~(47) Trans-Texas Corridor--The system of multimodal facilities designated by the commission under Transportation Code, §227.011.~~]

(47) [~~(48)~~] Toll project--Has the meaning assigned by Transportation Code, §201.001.

*§2.5. Public Involvement.*

(a) - (d) (No change.)

(e) Public involvement for EIS project or supplemental EIS project.

(1) - (8) (No change.)

[(9) Notice of availability of FEIS for project on Trans-Texas Corridor. In addition to the requirements in paragraph (7) of this subsection, after the FEIS for a project on the Trans-Texas corridor is approved under §2.12 of this subchapter, the district shall take the actions described in this paragraph.]

[(A) The district shall post the FEIS on the department's internet website, along with information detailing where a copy may be reviewed or obtained.]

[(B) The district shall notify the following persons that the FEIS is available on the department's website:]

*[(i)* each state senator and representative who represents any part of the area in which a segment of the project is located; and]

*[(ii)* the commissioners court of each county in which the project is located.]

(9) [(10)] Notice of ROD. The environmental division shall publish notice of the ROD in the *Texas Register.* The district shall publish a notice of availability of the ROD in local newspapers.

(f) - (i) (No change.)

*§2.12. Environmental Impact Statement (EIS)*

(a) - (d) (No change.)

(e) DEIS.

(1) (No change.)

[(2) In accordance with Transportation Code, §227.004, a DEIS for a Trans-Texas Corridor project shall explain each of the matters described in this paragraph.]

[(A) The reasons for the immediate and future needs of the project.]

[(B) The reasonableness of and necessity for the project.]

[(C) The reasons for the immediate and future needs for each mode of transportation in that segment of the project.]

[(D) The reasonableness and necessity for each mode of transportation in that segment of the project.]

(2) [(3)] The environmental division shall review the DEIS to determine if it complies with this subsection and other requirements, and if appropriate, approve it for circulation by signing and dating the cover sheet. For a federal-aid project, the FHWA shall review and if appropriate approve the DEIS.

(3) [(4)] The district shall circulate the DEIS in accordance with §2.5(e) of this subchapter.

(4) [(5)] The district and environmental division shall give notice of availability of the DEIS in accordance with §2.5(e) of this subchapter.

(5) [(6)] After the DEIS is circulated, public hearing held, and comments reviewed, the district shall prepare an FEIS or a supplemental DEIS.

(f) (No change.)

*§2.16. Mitigation.*

(a) (No change.)

(b) Compensatory mitigation may include:

(1) - (4) (No change.)

(5) an agreement with the Texas Historical Commission under §2.24 of this chapter (relating to Memorandum of Understanding with the Texas Historical Commission) on appropriate mitigation measures for an adverse effect directly resulting from a transportation project; or

[(6) mitigation for the Trans-Texas Corridor as provided by Transportation Code, §227.028; or]

(6) [(7)] the transfer of real property to a public agency or private entity with or without monetary consideration if the property is used or is proposed to be used for mitigation purposes.

(c) (No change.)

*§2.19. Rail Transportation Project.*

(a) Environmental studies for the acquisition, abandonment, design, construction, lease, maintenance, or operation of a passenger or freight rail facility under Transportation Code, Chapter 91 [or Chapter 227] that are subject to 49 United States Code §10901 will be accomplished in accordance with applicable state and federal requirements and, in particular, 49 Code of Federal Regulations Part 1105.

(b) Public involvement for a rail transportation project that is subject to 49 United States Code §10901 shall be consistent with applicable state and federal law, particularly 49 Code of Federal Regulations Part 1105, this subchapter, and Subchapters B and C of this chapter.

(c) Environmental studies and public involvement for the acquisition, abandonment, design, construction, lease, maintenance, or operation of a passenger or freight rail facility, under Transportation Code, Chapter [Chapters] 91 [and 227], that are not subject to 49 United States Code §10901 shall be accomplished in accordance with this subchapter and Subchapters B and C of this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102483
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-8683

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# CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

## SUBCHAPTER A. GENERAL

### 43 TAC §9.6

The Texas Department of Transportation (department) proposes amendments to §9.6, concerning Contract Claim Procedure for Comprehensive Development Agreement.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these

amendments is to remove all provisions in Chapter 9 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Amendments to §9.6, Contract Claim Procedure for Comprehensive Development Agreement, remove the reference to Transportation Code, §227.023.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to have the rule accurately reflect the statutory law. There are no anticipated economic costs for persons required to comply with the section as proposed.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §9.6 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

*§9.6. Contract Claim Procedure for Comprehensive Development Agreement.*

(a) - (b) (No change.)

(c) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) (No change.)

(2) Comprehensive development agreement (CDA)--An agreement with a developer that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a project described in Transportation Code, §223.201(a), and may also provide for the financing, acquisition, maintenance, or operation of such a project. A CDA is also authorized under Transportation Code, §91.054 (rail facilities)[~~, and under Transportation Code, §227.023 (Trans-Texas Corridor)~~]. A CDA includes related agreements that collectively constitute a CDA or other agreements entered into with or for the benefit of the department in connection with the CDA.

(3) - (9) (No change.)

(d) - (m) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
General Counsel
Texas Department of Transportation
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## CHAPTER 21. RIGHT OF WAY

The Texas Department of Transportation (department) proposes amendments to §21.10, Negotiations, §21.13, Highway Right-of-Way Values, §21.14, Qualifications of Real Estate Appraisers and Other Technical Experts or Estimators, §21.111, Definitions, and §21.118, Relocation Review Committee, all concerning department land acquisition procedures.

EXPLANATION OF PROPOSED AMENDMENTS

Title 43, Texas Administrative Code (TAC), Chapter 21, Subchapter A, Land Acquisition Procedures, was adopted to prescribe requirements for the acquisition of real property by the department in accordance with Property Code, Chapter 21, Subchapter B, Procedure. Senate Bill 18 (SB 18), 82nd Legislature, Regular Session, 2011, amended Property Code, §21.0111 and added Property Code, §21.0113 to require certain procedures be followed in connection with offers for real property made by entities with eminent domain authority, such as the department. The proposed amendments are necessary to comply with the provisions of SB 18 and to clarify existing language.

Amendments to §21.10 include multiple changes. The first change in §21.10(a) deletes the provision that a property owner will be provided with a copy of existing appraisal reports that were used in determining the final valuation offer, as the provision conflicts with the procedures required by SB 18. Second, new §21.10 adds negotiation procedures required by SB 18. Specifically, new subsection (b) requires the department to make a bona fide offer to acquire real property voluntarily and requires the offers be in writing and advise owners of their disclosure rights.

New subsection (c) requires that an initial offer include copies of all related appraisal reports prepared in the previous ten years that were produced or acquired by the department and be sent to the property owner by certified mail, return receipt requested.

New subsection (d) requires that the final offer be equal to or greater than the amount of an appraisal by a certified appraiser of the value of the property being acquired and any damages to any of the owner's remaining property. It also requires that the final offer include a copy of the appraisal the final offer is based on, the conveyance document to be signed by the property owner, and a copy of the statutorily required landowners' bill of rights statement, unless such items have been previously provided. Finally, it provides that the department will not make a final offer before the 30th day after the date of delivery of the initial offer.

New subsection (e) requires the department to give the property owner 14 days after the date of the final offer to respond to the offer before filing a petition of condemnation.

The last sentence of current §21.10(a) and paragraphs §21.10(a)(1), (2), and (3) are redesignated as new subsection (f) and current §21.10(b) is redesignated as new subsection (g).

New subsection (h) of §21.10 provides that for the purposes of §21.10 a document is considered delivered on the earlier of the delivery date on the certified mail receipt or the fifth day after the date the document, properly addressed with postage paid, is deposited with the United States Postal Service. This provision allows for certainty in determining when the department can make a final offer or begin a condemnation proceeding.

Amendments to §21.13 delete the original heading "Highway Right-of-Way Values" and add new heading "Valuation for Real Property to be Acquired", and delete the phrase "right-of-way" and replace it with "real property", to clarify that the section applies to all acquisitions of real property by the department. A new provision is added providing that the approved values used for the final offer will be determined based on a written appraisal by a certified appraiser, as required by SB 18.

Amendments to §21.14 delete the phrase "In the acquisition of highway right-of-way" and add the language "used in the acquisition of real property for highway purposes" to clarify that the section applies to all acquisitions of real property for highway purposes, not just right-of-way. The word "are" is deleted and replaced with "must be" to clarify that the department must approve qualifications of real estate appraisers and other technical experts or estimators. Finally, the amendments add a requirement that the qualifications of a real estate appraiser must include a requirement that the appraiser be certified, as required by SB 18.

Amendments to §21.111 clarify the definition of "Relocation Review Committee" by removing provisions regarding the appointment and composition of the committee and moving those provisions to §21.118.

Amendments to §21.118 add new subsection (a) to set forth the process for the appointment of members of the Relocation Review Committee. The amendments require the executive director to appoint at least three persons as members of the Relocation Review Committee. The amendments also establish that in order to be eligible for appointment to or service on the committee, a person may not be below the level of department division director, office director, or district engineer, and may not be directly involved with the relocation assistance program. The amendments designate the existing provisions of §21.118 as new subsection (b).

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

PUBLIC BENEFIT

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be consolidation of applicable regulations into 43 TAC Chapter 21 and improved efficiency and consistency in the handling of acquisitions of real property by the department. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments to §21.10, §21.13, §21.14, §21.111,and §21.118 may be submitted to Suzanne Mann, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

## SUBCHAPTER A. LAND ACQUISITION PROCEDURES

### 43 TAC §§21.10, 21.13, 21.14

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.051, which provides the commission with the authority to acquire real property on behalf of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

*§21.10. Negotiations.*

(a) Every reasonable effort will be made to acquire real property by negotiation and the full amount established as just compensation will be offered for the property. [~~At the time an offer to purchase is made, an owner of real property will be provided with a copy of all existing appraisal reports that were used in determining the final valuation offer in accordance with Property Code, Section 21.0111.~~] Where appropriate, the just compensation for the real property acquired and for damages to remaining real property shall be separately stated. [~~No owner shall be required to surrender possession of real property before:~~]

[~~(1) payment of the agreed purchase price;~~]

[~~(2) in the case of condemnation, the amount of compensation stated in the final judgment is paid to the owner or deposited with a court for the benefit of the owner; or~~]

[~~(3) in the case of condemnation when possession is required by the department prior to a final judgment being entered, the department has deposited with the court, for the benefit of the owner, the amount of a special commissioners' award or the amount of the department's approved appraisal of the property, whichever is greater.~~]

(b) The department will make a bona fide offer to acquire the real property from the property owner voluntarily, as provided by Property Code, §21.0113. All offers will be in writing, and will inform the owner of the owner's right to discuss the offer with others or to keep the offer confidential, as provided by Property Code, §21.0111. [~~In the case of condemnation where the department does not take possession until after a final judgment of the court has been entered, the amount of compensation paid to the owner of the property or deposited with a court for the benefit of the owner shall be the amount of compensa-~~

~~tion stated in the final judgment in the condemnation proceeding for the property. To the greatest extent practicable, no person lawfully occupying real property shall be required to move without at least 90 days written notice of the date by which the move is required.~~]

(c) An initial offer to purchase or lease will include copies of all appraisal reports that relate to the real property, that were prepared during the ten-year period preceding the date that the offer was sent to the owner, and that were produced or acquired by the department. The initial offer will be sent to the owner of the real property by certified mail, return receipt requested.

(d) The final offer must be equal to or greater than the amount of an appraisal obtained by the department from a certified appraiser of the value of the property being acquired and the damages, if any, to any of the property owner's remaining property. The department will include with the final offer a copy of the appraisal on which the final offer is based, the conveyance document that is to be signed by the property owner, and a copy of the landowners' bill of rights statement required by Property Code, §21.0112, unless the department has provided a copy of the document to the owner before the final offer is made. The department will not make the final offer before the 30th day after the date that the initial offer was delivered to the owner.

(e) Before filing a petition of condemnation, the department will give the property owner at least 14 days after the date that the final offer was delivered to the owner to respond to that offer.

(f) No owner shall be required to surrender possession of real property before:

(1) payment of the agreed purchase price;

(2) in the case of condemnation, the amount of compensation stated in the final judgment is paid to the owner or deposited with a court for the benefit of the owner; or

(3) in the case of condemnation when possession is required by the department prior to a final judgment being entered, the department has deposited with the court, for the benefit of the owner, the amount of a special commissioners' award or the amount of the department's approved appraisal of the property, whichever is greater.

(g) In the case of condemnation where the department does not take possession until after a final judgment of the court has been entered, the amount of compensation paid to the owner of the property or deposited with a court for the benefit of the owner shall be the amount of compensation stated in the final judgment in the condemnation proceeding for the property. To the greatest extent practicable, no person lawfully occupying real property shall be required to move without at least 90 days written notice of the date by which the move is required.

(h) For the purposes of this section, a document is considered to be delivered on the earlier of the delivery date indicated on the certified mail receipt or the fifth day after the date that the document, properly addressed with postage prepaid, is deposited with the United States Postal Service.

*§21.13. Valuation for Real Property to be Acquired ~~[Highway Right-of-Way Values]~~.*

Prior to the making of an offer [~~offers~~] to purchase real property [~~right-of-way~~] for highway purposes by the department, approved values are determined based upon appraisals (including short form appraisals, memorandums of value, or opinions of value) of the real property to be acquired. The approved values used for the final offer are determined based upon a written appraisal by a certified appraiser. The owner or the owner's designated representative is given the opportunity to accompany the appraiser during the inspection of the property being appraised.

*§21.14. Qualifications of Real Estate Appraisers and Other Technical Experts or Estimators.*

The [~~In the acquisition of highway right-of-way, the~~] qualifications of real estate appraisers, and other technical experts or estimators used in the acquisition of real property for highway purposes must be [~~are~~] approved by the department. The qualifications of a real estate appraiser must include a requirement that the appraiser be certified.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
General Counsel
Texas Department of Transportation
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## SUBCHAPTER G. RELOCATION ASSISTANCE AND BENEFITS

### 43 TAC §21.111, §21.118

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §203.051, which provides the commission with the authority to acquire real property on behalf of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 203.

*§21.111. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Commission--The Texas Transportation Commission.

(2) Department--The Texas Department of Transportation.

(3) Displacee--A person lawfully present in the United States who, as a result of the acquisition of property for highway right of way purposes, is required to move from a dwelling, business, or farm.

(4) District engineer--The chief administrative officer in charge of a district of the department, or the designee.

(5) Executive director--The chief executive officer of the Texas Department of Transportation.

(6) Relocation Review Committee--A [~~An administrative~~] committee whose members are appointed under §21.118 of this subchapter (relating to Relocation Review Committee) [~~by the executive director and include the deputy executive director (chair) and at least two other department employees who are not directly involved with the relocation assistance program~~].

*§21.118. Relocation Review Committee.*

(a) The executive director will appoint at least three persons as members of the Relocation Review Committee. To be eligible for appointment to or service on the committee, a person may not be:

(1) below the level of department division director, office director, or district engineer; and

(2) directly involved with the relocation assistance program.

(b) A displacee who is dissatisfied with the department's determination of eligibility or relocation payments and services may request a review by the Relocation Review Committee. The review procedures are as follows.

(1) Applications must be filed with the appropriate district office within 90 days after the displacee receives notice of relocation entitlements.

(2) The district engineer will promptly and carefully review the facts and attempt to resolve the matter at the district level. The displacee will be promptly notified in writing of the results of the district engineer's review.

(3) A displacee who is still dissatisfied after the first review may request that the district engineer's decision be reviewed by the department's Relocation Review Committee.

(4) The district shall promptly forward the application together with all the information the district has relating to the displacee's application and the district engineer's personal recommendation to the department's Right of Way Division. The division will review the materials, make a determination on the application, and prepare a written statement as to the issues involved for the relocation assistance appeal file. If the division does not find in favor of the displacee's claim, the division will promptly forward the file to the Relocation Review Committee.

(5) The Relocation Review Committee shall give each displacee a full opportunity to be heard, carefully review all facts presented, and render a prompt decision. The decision will be supported by the necessary rationale and will be documented in the parcel file.

(6) The committee may discuss an application with the executive director. The executive director shall make the final ruling or may counsel with the commission if necessary.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
General Counsel
Texas Department of Transportation
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# CHAPTER 24. TRANS-TEXAS CORRIDOR SUBCHAPTER B. DEVELOPMENT OF FACILITIES

**43 TAC §24.11, §24.12**

*(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Transportation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)*

The Texas Department of Transportation (department) proposes the repeal of §24.11, Comprehensive Development Agreements, and §24.12, Environmental Review and Public Involvement concerning Trans-Texas Corridor.

EXPLANATION OF PROPOSED REPEALS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to repeal all provisions in Chapter 24 of the rules of the department, which relates to the Trans-Texas Corridor. The effect of these repeals in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commission) is the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Changes repeal §24.11 and §24.12, the two sections in Chapter 24, Trans-Texas Corridor.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the repeals will be to have the rules accurately reflect the statutory law. There are no anticipated economic costs for persons required to comply with the sections as proposed.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeals to §24.11 and §24.12 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The repeals are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

*§24.11. Comprehensive Development Agreements.*

*§24.12. Environmental Review and Public Involvement.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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# CHAPTER 25. TRAFFIC OPERATIONS
## SUBCHAPTER A. GENERAL

### 43 TAC §25.1

The Texas Department of Transportation (department) proposes amendments to §25.1, concerning Uniform Traffic Control Devices.

EXPLANATION OF PROPOSED AMENDMENTS

Under Transportation Code, §544.001, the Texas Transportation Commission (commission) is required to adopt a manual for a uniform system of traffic control devices. The statute further states that the manual must be consistent with the state traffic laws and to the extent possible conform to the system approved by the American Association of State Highway Transportation Officials. The edition of the manual that is currently effective is the 2006 Revision 1 version.

The Texas Manual on Uniform Traffic Control Devices (MUTCD) is revised periodically to maintain substantial conformance with the National MUTCD to allow use of a single manual for local, state, and Federal-aid highway projects. The National MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways open to public travel. The National MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

Amendments to §25.1 adopt the 2011 Texas MUTCD by reference. The FHWA completed amendments to the National MUTCD in 2009 and Texas is required to incorporate these changes into the state manual by January 15, 2012. The department is attempting to work with FHWA to allow some variations from the federal manual. Due to the implementation deadline, the department determined that it would be best for the purposes of these rules to post the manual with the language recommended for the variations, even though the variations have not yet been approved by FHWA. This will provide interested individuals the opportunity to comment on the department's recommended language as compared to the language in the federal MUTCD.

The 2011 version of the Texas MUTCD is available online at the department's website, www.txdot.gov. The federal MUTCD is available online at www.fhwa.dot.gov. The pending issues are included in Section 2C.06 Horizontal Alignment Warning Signs, Section 2C.07 Horizontal Alignment Signs, Section 2C.63 Object Marker Design and Placement Height, Section 2D.43 Street Name Signs, and Section 2E.37 Exit Gore Signs and also include references to overhead down arrows for option lane exits in Chapter 2E, Guide Signs-Freeways and Expressways. If FHWA does not approve the language for one or more of the pending issues, the department will modify the language in the 2011 version related to those issues to reflect that of the federal manual. The department will update the department's website regarding resolution of these pending issues with FHWA.

Amendments to §25.1 also remove the existing language in subsection (a) concerning public inspection of a copy of the TMUTCD at the Secretary of State's Office. As part of the rule process, the department will file a copy of the manual with the Secretary of State and the public can access it at the Secretary of State's Office; additionally, the department will also provide access to the manual for inspection. The Texas MUTCD will be available for review on the department's web site and at the department's Traffic Operations Division office at 150 East Riverside Drive in Austin, Texas.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be a more uniform use of traffic control devices and increased highway safety. There are no anticipated economic costs for persons required to comply with the section as proposed. There will be no adverse economic effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed rules. The public hearing will be held at 9:30 a.m. on August 29, 2011, in the Ric Williamson Hearing Room, First Floor, Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 9:00 a.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Government and Public Affairs Division, 125 East 11th

Street, Austin, Texas 78701-2483, (512) 305-9137 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.1 may be submitted to Carol Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on September 14, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §544.001, which requires the commission to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 544.

*§25.1. Uniform Traffic Control Devices.*

(a) The 2011 [~~2006~~] Texas Manual on Uniform Traffic Control Devices, [~~Revision 1, which is filed with this section and hereby incorporated by reference,~~] was prepared by the Texas Department of Transportation [~~as required by law~~] to govern standards and specifications for all [~~such~~] traffic control devices to be erected and maintained upon any street, highway, bikeway, public facility, or private property open to public travel within this state, including those under local jurisdiction, and is adopted by reference. Copies of the manual are available online through the Texas Department of Transportation web site, www.txdot.gov, and a copy is available for public inspection at the department's Traffic Operations Division office located at 150 East Riverside Drive, Austin, Texas. [~~are on file for public inspection with the Office of the Secretary of State, Texas Register Division, James Earl Rudder State Office Building, 1019 Brazos St., Room 245, Austin, Texas 78701.~~]

(b) This manual will be periodically updated. In the intervals between updates, standards contained in "Official Rulings on Requests for Interpretations, Changes, and Experimentation" to the United States Department of Transportation's Manual on Uniform Traffic Control Devices for Streets and Highways will be inserted in this manual and may be used as interim standards.

(c) This manual is not intended to preclude the use of sound engineering judgment and experience in the application and installation of devices and particularly in those cases not specifically covered which must not conflict with the manual or other applicable state laws.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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## SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

### 43 TAC §§25.21 - 25.24

The Texas Department of Transportation (department) proposes amendments to §§25.21 - 25.24, concerning Procedures for Establishing Speed Zones.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill 109, House Bill 1201, and House Bill 1353, 82nd Legislature, 2011, made changes to the existing statutes related to speed limits in Texas. The proposed amendments to §§25.21 - 25.24 incorporate those statutory changes into the department's existing rules related to establishing speed zones. These amendments also include some additional clarifications to address procedural changes with establishing speed zones.

House Bill 109 allows a municipality or county to designate an official with transportation engineering experience in establishing speed limits to temporarily lower a prima facie speed limit at the site of a vehicular accident reconstruction.

House Bill 1201 repealed the existing statute allowing the Texas Transportation Commission (commission) to establish a speed limit of 85 miles per hour (mph) on a portion of the Trans-Texas Corridor. The bill allows the commission to establish an 85 mph speed limit on a portion of the state highway if the highway was designed to accommodate an 85 mph speed limit and the commission determines that such a speed limit is reasonable and safe based on an engineering and traffic investigation.

House Bill 1353 allows the department to establish a 75 mph speed limit on a portion of the state highway system if the commission determines that such a speed limit is reasonable and safe based on an engineering and traffic investigation. The legislation also repealed the existing 65 mph night speed limit and lower speed for large trucks.

Amendments to §25.21 delete references to night speed limits, add language allowing the commission to establish a 75 mph speed limit in any county of the state, and delete references to lower truck speed limits. These changes are necessary to implement House Bill 1353. The amendments also change the authority that allows the commission to set an 85 mph speed limit from the Trans-Texas Corridor to a highway designed to accommodate the higher speed as authorized in House Bill 1201.

The amendments to §25.21 also add language to incorporate the provisions of House Bill 109 which allows cities and counties to temporarily lower existing prima facie speed limits at the sites of vehicular accident reconstructions. The language requires that the local authority use the guidelines established for setting work zone area speed limits, notify the appropriate district engineer, and follow lane closure rules and guidelines if applicable. The language also makes it clear that the local authority does not have to follow the other rules in the subchapter on establishing speed limits. The additional requirements are not necessary as an engineering and traffic study would not be applicable.

The proposed amendments to §25.22 make conforming changes by eliminating references to night speed limits and deleting the requirement that speed limits created within city limits over 60 mph be established by commission minute order. These amendments are necessary to conform to the requirements of House Bill 1353.

The amendment to §25.23(d)(5)(A)(ii) revises a reference to the maximum speed reduction allowed from the average speed determined by a speed limit study from 7 mph to 12 mph for high-crash locations. The amendment revises the reference to the maximum speed reduction allowed from the average speed determined by a speed limit study from 7 mph to 12 mph for high-crash locations to conform this section to the existing requirements contained in §25.23(d)(5)(A)(v). This clarification in the existing language is unrelated to the legislative changes implemented during the 82nd Legislature.

Amendments to §25.24 correct the tables describing the authority of the department, Regional Mobility Authorities, and Regional Transportation Authorities to establish speed limits on the state highway system. These changes incorporate the requirements of House Bill 1353.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Carol Rawson, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Rawson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be adherence to state law and more efficient operation of the state highway system. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.21 - 25.24 may be submitted to Carol Rawson, P.E., Director, Traffic Operations Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §545.353, which authorizes the commission to establish speed limits and adopt the procedures for establishing speed zones.

CROSS REFERENCE TO STATUTE

Transportation Code, §§545.352, 545.353, 545.354 - 545.3561, 545.358 and 545.362.

*§25.21. Introduction.*

(a) (No change.)

(b) Background.

(1) Prima facie concept. In Texas, all speed limits are considered "prima facie" limits. Prima facie limits are those limits which on the face of it, are reasonable and prudent under normal conditions.

(2) Authority to set speed zones.

(A) Transportation Code, §545.353 authorizes the commission to alter maximum speed limits on highway routes both within and outside of cities, provided the Procedures for Establishing Speed Zones are followed and the commission determines that the speed being established on a part of the highway system is a safe and reasonable speed for that part of the highway. The commission may establish a speed limit of:[.]

[~~(B) Transportation Code, §545.353, subsections (h) and (i), address the commission's authority to establish a daytime speed limit of 75 or 80 miles per hour on a portion of the state highway system.~~]

*(i)* [~~The commission may establish a~~] 75 miles [~~mile~~] per hour on any portion of the state highway system; [~~speed limit in counties with a population density of less than 15 persons per square mile. Counties that are currently eligible for this higher maximum daytime speed limit are Andrews, Archer, Armstrong, Bailey, Baylor, Blanco, Borden, Brewster, Briscoe, Brooks, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Deaf Smith, Dickens, Dimmit, Donley, Duval, Edwards, Fisher, Floyd, Foard, Frio, Gaines, Garza, Glasscock, Goliad, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hudspeth, Irion, Jack, Jeff Davis, Jim Hogg, Kenedy, Kent, Kimble, King, Kinney, Knox, Lamb, La Salle, Leon, Lipscomb, Live Oak, Loving, Lynn, Martin, Mason, McCullough, McMullen, Menard, Mills, Mitchell, Motley, Ochiltree, Oldham, Parmer, Pecos, Presidio, Reagan, Real, Red River, Reeves, Refugio, Roberts, Runnels, San Saba, Schleicher, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Terrell, Terry, Throckmorton, Upton, Val Verde, Ward, Wheeler, Winkler, Yoakum, Zapata, and Zavala.~~]

*~~[(ii) The department will reevaluate which counties are eligible for a 75 mile per hour speed limit upon the release of each decennial federal census of the population.]~~*

*(ii)* [~~(iii)~~] [~~The commission may establish a speed limit of~~] 80 miles per hour [~~for daytime~~] on parts of Interstate Highway 10 and of Interstate Highway 20 in Crockett, Culberson, Hudspeth, Jeff Davis, Kerr, Kimble, Pecos, Reeves, Sutton, or Ward counties; or[.]

*(iii)* up to 85 miles per hour on a highway designed to accommodate travel at the speed being established.

*~~[(iv) In order to establish a 75 or 80 mile per hour daytime speed limit in an eligible county, the commission must determine that a 75 or 80 mile per hour speed limit is safe and reasonable.]~~*

*~~[(v) A 75 or 80 mile per hour speed limit established under this section does not apply to trucks (other than light trucks and light trucks pulling a trailer), truck tractors, trailers, and semitrailers.]~~*

(B) [~~(C)~~] The altering of the general statewide maximum speed limits to fit existing traffic and physical conditions of the highway constitutes the basic principle of speed zoning.

(C) [~~(D)~~] Transportation Code, §545.355 and §545.356, give counties and cities the [~~same~~] authority to establish a prima facie maximum speed limit of 75 miles per hour within their respective jurisdictions. The law also provides that any speed zone on highway routes in cities established by commission minute order will supersede any conflicting zone set by city ordinance or resolution.

(D) [~~(E)~~] Except in very unusual circumstances, the zoning on state highway routes within cities should only be set by city ordinance or resolution based upon the recommendations of the department. The usual practice, even for speed zones established by city ordinance or resolution, is for the department to make the

necessary speed studies and recommend the most appropriate zoning to the city. Cities that have a traffic engineering staff may also make speed studies on state-maintained highways and recommend proper zoning. The procedure is permissible so long as the department is afforded an opportunity to review and approve the recommended city zoning.

(E) [~~(F)~~] County commissioner courts and governing bodies of incorporated cities and villages may alter maximum prima facie speed limits on roadways under their jurisdiction in accordance with the provisions of Transportation Code, §545.355 and §545.356, respectively. However, alteration of maximum prima facie speed limits on any designated or marked roadway of the state highway system, even within the corporate limits of a city, typically requires an engineering and traffic investigation in accordance with §25.23 of this subchapter (relating to Speed Zone Studies), and the approval of the department.

(F) [~~(G)~~] A county that increases the prima facie speed limit on a county road or highway is also required to conduct an engineering and traffic investigation. However, for a county road or highway outside the limits of the right of way of an officially designated or marked highway or road on the state highway system, the county commissioners court may declare a lower speed limit of not less than 30 miles per hour, if the commissioners court determines that the prima facie speed limit on the road or highway is unreasonable or unsafe.

(G) [~~(H)~~] County authority does not extend to any segment of the state highway system; however, the commissioners court of a county, by resolution, may request the commission to determine and declare a reasonable and safe prima facie speed limit that is lower than a speed limit established by Transportation Code, §545.352, on any part of a farm-to-market or ranch-to-market road without improved shoulders located in that county.

(H) [~~(I)~~] The commission shall give consideration to local public opinion and may determine and declare a lower speed limit on any part of the road without an engineering and traffic investigation, but the commission must use sound and generally accepted traffic engineering practices in determining and declaring the lower speed limit. Sound and generally accepted engineering practices for these FM and RM roadways without improved shoulders are described in §25.23(d) of this subchapter.

(I) [~~(J)~~] County authority [~~This~~] is different from the authority of cities, who may exercise concurrent authority subject only to commission override. In exercising their authority, cities must base any speed zones on engineering and traffic investigations, notwithstanding the type of road or street and whether the state highway system is involved.

(J) [~~(K)~~] The authority of regional tollway authorities, regional mobility authorities, and the Commanding Officer of a United States Military Reservation to alter the speed limits are addressed in Transportation Code, §§370.033, 545.354, and 545.358. These decision making authorities are required to follow the speed zone procedures adopted by the department when altering, on the basis of an engineering and traffic study, speed limits on off-system turnpikes or on-system highways within the confines of a military reservation.

~~[(L) Transportation Code, §545.3531, authorizes the commission to establish a speed limit of not more than 85 miles per hour on the Trans-Texas Corridor.]~~

(3) (No change.)

(c) Factors affecting safe speed.

(1) - (5) (No change.)

(6) Weather and visibility.

(A) Speeds will normally be selected and posted for good weather conditions and dry pavement. Texas law, however, also provides for the posting of speeds for wet weather conditions.

(B) Except in cases where the statewide maximum legal limits are posted, speeds will normally be posted on the basis of daylight speed values determined under good weather conditions. [~~It is permissible, however, for different day and night speeds to be posted for speed zones where it can be shown to be necessary by nighttime speed surveys.~~]

(C) When it can be shown that it is required during wet or inclement weather, a wet weather speed zone may be established by commission minute order.

*(i)* The wet weather speed limit should be posted in addition to the regular posted speed zone.

*(ii)* When appropriately signed, this wet weather speed limit will be effective during wet weather at any time during hours of daylight and darkness.

(d) Accident reconstruction speed limits.

(1) Transportation Code, §545.3561, gives municipalities and counties the authority to temporarily lower prima facie speed limits at the site of a crash investigation using vehicular accident reconstruction. The municipality or county must use a transportation engineering official with experience establishing speed limits. For a municipality, the authority applies to a highway or part of a highway in the municipality, including a highway in the state highway system. For a county, the authority does not apply to a road or highway in the state highway system.

(2) In establishing the speed limit the municipality or county is not required to conduct an engineering and traffic study or comply with other provisions of this subchapter. To set the temporary speed limit the municipality or county must:

(A) follow safety guidelines as developed by the department for setting regulatory construction speed limits in work zone areas;

(B) provide notice to the department district engineer in the district in which the accident reconstruction is occurring at least 48 hours prior to the speed reduction; and

(C) during the time that the accident reconstruction is being conducted, place and maintain temporary speed limit signs that conform to the Texas Manual on Uniform Traffic Control Devices and temporarily conceal all other signs that permit higher speeds and remove the temporary signs and concealments when the accident reconstruction is complete.

(3) If a traffic lane will be closed to accommodate the reconstruction investigation the municipality or county must follow all department rules and guidelines on lane closures.

(4) The department may remove any temporary speed limit signs or concealments of speed limit signs that remain if the municipality does not remove them and after the department determines that the accident reconstruction is complete.

*§25.22. Regulatory and Advisory Speeds.*

(a) (No change.)

(b) Regulatory speed zones.

(1) Introduction. A regulatory speed zone is the application, by commission minute order or city or county ordinance or res-

olution, of posted legal speed limits to sections of roadway where the numerical values of these special speed limits have been determined through engineering investigations of traffic and physical conditions.

(2) Within incorporated cities.

(A) The commission has the authority to:

*(i)* alter the speed limits on highways within the corporate limits of cities; or

*(ii)* override a speed limit set by city ordinance or resolution on such highways.

~~[(B) Any speed limit over 60 miles per hour inside the city limit will be set by commission minute order.]~~

(B) [~~(C)~~] The department should make studies and present recommendations to the city for its acceptance and passage of a city ordinance or resolution to establish city speed zones.

(3) - (4) (No change.)

(5) Regulatory speed signs (R2 Series).

(A) Signs for regulatory speed zones shall be:

*(i)* from the R2 series as shown in the Texas Manual on Uniform Traffic Control Devices (TMUTCD); and

*(ii)* of the appropriate design, including size, text, and color.

(B) At the end of speed zones on conventional highways where the maximum legal rural speeds are permissible, an [~~a combination of the~~] R2-1 SPEED LIMIT XX [~~and R2-3 NIGHT XX~~] sign, or larger size sign showing those limits, should be erected in accordance with the TMUTCD.

(C) At the end of speed zones on freeways where the maximum legal rural speeds are permissible, the R2-1 SPEED LIMIT XX sign [~~(in combination with the R2-3 NIGHT XX sign, where applicable)~~] showing those limits shall be erected.

(D) (No change.)

(6) (No change.)

(c) - (e) (No change.)

*§25.23. Speed Zone Studies.*

(a) - (c) (No change.)

(d) Speed zone design.

(1) - (4) (No change.)

(5) Variation from 85th percentile.

(A) The posted speed selected is the nearest value ending in 5 or 0. The final speed limit may be lowered or raised by as much as 5 miles per hour from the 85th percentile speed or trial-run speed (performed if 125 cars cannot be checked during the two or four hour speed check) based on the professional judgment of the supervising engineer. Only under special conditions would the zone speed vary further from the 85th percentile. Explanations of such conditions follow.

*(i)* Different results at adjacent speed check stations. If the 85th percentile speeds for adjacent speed check stations are approximately the same, they may be averaged to determine the zone speed. Any 85th percentile speed should not be included in such averages if it varies more than 7 miles per hour from the speed derived from the average.

*(ii)* Crash rate greater than average. On a section of highway having a crash rate greater than the statewide average crash rate for the same type of roadway section, the zone speed may be as much as 12 [~~7~~] miles per hour lower than the 85th percentile speed. This should be considered more as an exception than as a rule, and should be done only when enforcement agencies will assure a degree of enforcement that will make the speed zone effective.

*(iii)* - *(v)* (No change.)

(B) - (D) (No change.)

(6) - (8) (No change.)

(e) - (f) (No change.)

*§25.24. Speed Zone Approval.*

(a) State highway system. Speed zones on the state highway system and on turnpikes under the department's authority, may be set by commission minute order or by the city, depending on the circumstance.
Figure: 43 TAC §25.24(a)

(b) Regional Mobility Authorities. Speed zones on turnpikes under the control of a Regional Mobility Authority (RMA) may be set by order of the RMA board or by a city through which the turnpike passes.
Figure: 43 TAC §25.24(b)

(c) Regional Tollway Authorities. Speed zones on turnpikes under the control of a Regional Tollway Authority (RTA) may be set by order of the RTA board or by a city through which the turnpike passes.
Figure: 43 TAC §25.24(c)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102489
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-8683

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# CHAPTER 27. TOLL PROJECTS
# SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

**43 TAC §27.2**

The Texas Department of Transportation (department) proposes amendments to §27.2, Definitions, concerning Comprehensive Development Agreements.

EXPLANATION OF PROPOSED AMENDMENTS

House Bill No. 1201, Acts of 82nd Legislature, Regular Session, 2011, repealed the authority for the establishment and operation of the Trans-Texas Corridor and removed all references in state statutes to the Trans-Texas Corridor. The purpose of these amendments is to remove all provisions in Chapter 27 of the rules of the department relating to the Trans-Texas Corridor. The effect of these amendments in conjunction with amendments to other chapters of the department's rules being simultaneously considered by the Texas Transportation Commission (commis-

sion) is the removal of all provisions in the department's rules relating to the Trans-Texas Corridor.

Amendments to §27.2 remove paragraph (15)(B) relating to a facility or a combination of facilities on the Trans-Texas Corridor being an eligible project for the purposes of 43 TAC Chapter 27, Subchapter A and redesignate the following subparagraphs accordingly.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years in which the section is in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be to have the rule accurately reflect the statutory law. There are no anticipated economic costs for persons required to comply with the section as proposed.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §27.2 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

*§27.2. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (14) (No change.)

(15) Eligible project--A project described in Transportation Code, §223.201, and including a:

(A) toll project;

~~[(B) facility or a combination of facilities on the Trans-Texas Corridor, as defined in §24.11 of this title (relating to Comprehensive Development Agreements);]~~

(B) [~~(C)~~] state highway improvement project that includes both tolled and nontolled lanes and that may include nontolled appurtenant facilities;

(C) [~~(D)~~] state highway improvement project in which the private entity has an interest in the project;

(D) [~~(E)~~] state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; or

(E) [~~(F)~~] project that combines a toll project and a rail facility as defined in Transportation Code, §91.001.

(16) - (33) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102490
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-8683

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## SUBCHAPTER H. DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS

**43 TAC §§27.90 - 27.92**

The Texas Department of Transportation (department) proposes new §27.90, Purpose, §27.91, Definitions, and §27.92, Financial Terms, concerning Determination of Terms for Certain Toll Projects.

EXPLANATION OF PROPOSED NEW SECTIONS

Transportation Code, §228.013, added by Senate Bill 1420, 82nd Legislature, Regular Session, 2011, requires, for certain department toll projects in which a private entity has a financial interest in the project's performance, that the distribution of the project's financial risk, the method of financing for the project, and the tolling structure and methodology be determined by a committee comprised of representatives from the department, any local toll project entity for the area in which the project is located, the applicable metropolitan planning organization, and each municipality or county that provides revenue or right of way for the project. The proposed new sections prescribe the process for a committee's issuance of its determination.

The new sections define the circumstances in which a committee must be established and the process for the issuance of a report containing the committee's determination. The terms determined by a committee will affect the project procurement and the terms of the comprehensive development agreement for the toll project. Accordingly, a determination must be issued as soon as practical after a procurement has been authorized. The new sections only apply to projects developed under comprehensive development agreements. Based on the terms of agreements that have been used by the department for the development, construction, and operation of toll projects, a private entity will only have a financial interest in the performance of a project developed under a comprehensive development agreement.

New §27.90 describes the purpose of the new sections.

New §27.91 defines words and terms used in the new sections.

New §27.92 provides that the new sections only apply to a toll project that will be developed under a concession agreement or an availability payment contract. Of the comprehensive development agreements entered into or contemplated to be entered into by the department, only a concession agreement or an avail-

ability payment contract provides a private entity with a financial interest in the project's performance.

New §27.92 limits the applicability of the new sections to a toll project for which funds allocated to a metropolitan planning organization or local funds are expected to be used to pay for project costs, property of a municipality or county is expected to be used as project right of way, or a municipality or county is expected to pay for the acquisition of right of way for the project. It is in the state's interest to have a determination issued as soon as possible. It may not be possible to know with certainty whether funds allocated to a metropolitan planning organization or city or county funds will be used to pay for project costs. Accordingly, new §27.92 provides that new Subchapter H of Chapter 27 applies if those funds are expected to be used to pay project costs.

Transportation Code, §228.013 does not define what funds are dedicated to or controlled by a region, municipality, or county. The only funds a regional body has responsibility for allocating to department toll projects are the funds the Texas Transportation Commission (commission) allocates to metropolitan planning organizations. Funds of a city or county that are granted to the municipality or county by the department and not used to meet local participation requirements would not be dedicated to or controlled by the municipality or county. This construction of the statute is consistent with the department's understanding that the purpose of the statute is to provide local and regional stakeholders with a say in project terms that affect the risk of loss of local and regional funds committed to a project.

New §27.92 provides that the membership of a committee will be determined after the commission authorizes the department to initiate a procurement for a toll project subject to the new sections. New §27.92 also provides that a committee shall submit a report to the department's executive director prior to the date the department issues a request for qualifications for a toll project, except for a project for which the department and a local toll project entity have agreed on the terms and conditions for the project under Transportation Code, §228.0111, or for which a local toll project entity has waived its option to develop, construct, and operate the project. For those projects, many of the terms to be considered by a committee have already been settled. The report for those projects must be submitted prior to the date the department issues a request for proposals for the project. The terms determined by a committee will affect the project procurement, the delivery method used, and the terms of the comprehensive development agreement for the toll project. Accordingly, a determination must be issued as soon as practical after a procurement has been authorized. Delay in issuing a request for qualifications or request for proposals and entering into an agreement for the delivery of a toll project will result in additional costs and increased congestion because of the delay in completing those needed projects.

In order to have a determination issued as soon as possible, the membership of a committee would be determined before it is clear whether a particular entity is required to be represented. New §27.92 provides that a committee will be comprised of one member appointed by each metropolitan planning organization and local toll project entity within whose boundaries all or part of the proposed project may be located, and one member appointed by each city and county with which the department intends to enter into an agreement under which the city or county will provide local funds to pay for right-of-way acquisition or other project costs or to acquire right of way for the project, or will provide property of the city or county for use as project right of way.

New §27.92 provides that a report issued by a committee will contain a determination concerning the distribution of project financial risk, which is defined as the allocation of revenue risk for a toll project between the department and the private entity with which the department enters into an agreement for the project. New §27.92 also provides that a report issued by a committee will contain a determination concerning the method of financing for the project, which is defined as a determination of whether the project should be funded with private or public funding or a combination of private and public funding. Transportation Code, §228.013 does not define those provisions. The definitions in the new sections are consistent with the department's understanding that the purpose of the statute is to provide local and regional stakeholders with a say in project terms that affect the risk of loss of local and regional funds committed to a project.

New §27.92 provides that a report issued by a committee will also contain a determination concerning the project's tolling structure and methodology, unless the project is subject to a regional tolling policy or the terms and conditions of a market valuation agreement or market valuation waiver agreement. Regional tolling policies have been adopted by certain metropolitan planning organizations that include, among other things, policies on toll rates and toll rate escalation. The membership of a metropolitan planning organization's policy board generally will include the municipalities, counties, and local toll project entities that would be part of a committee established under Transportation Code, §228.013. Similarly, a market valuation agreement or market valuation waiver agreement will include agreed terms and conditions for the development, construction, and operation of a toll project that include toll rates and toll rate escalation.

New §27.92 provides that if a committee does not submit a report by the date the department is scheduled to issue a request for qualifications or request for proposals, as applicable, for a project, the department will use any business terms applicable to the project that have been adopted by the metropolitan planning organization and that relate to the determinations to be included in the report. As discussed above, the membership of a metropolitan planning organization's policy board generally will include the entities that would be part of a committee.

New §27.92 includes provisions relating to committee meetings and administrative support of a committee that are intended to ensure the efficient operation of the committee, including having a division or office of the department schedule meetings for the committee and having the committee chair and the department finalize meeting agendas. Notices of meetings must comply with the requirements of the Open Meetings Act. The department shall provide information to the committee, including the project procurement schedule, necessary for a committee to issue a report in a timely manner.

New §27.92 defines a quorum of a committee as one half of the number of members appointed to the committee, and provides that a committee may act only by majority vote of the members present at the meeting and voting. These provisions will ensure that a committee is able to carry out its functions in a timely manner.

New §27.92 provides that a committee will cease to exist after submitting its report, but that the department may reconvene a committee if changed circumstances may result in a change in the committee's determinations.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new sections as proposed are in effect, there will be fiscal implications for state or local governments as a result of enforcing or administering the new sections. The fiscal impact cannot be quantified with any certainty as it will depend on the number and type of toll projects developed by the department.

Mark Tomlinson, Director, Texas Turnpike Authority Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT AND COST

Mr. Tomlinson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the new sections will be to facilitate local and regional support of department toll projects while providing local and regional stakeholders with a say in project terms that affect the risk of loss of local and regional funds committed to a project. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§27.90 - 27.92 may be submitted to Mark Tomlinson, Director, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 15, 2011.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing selection of a developer for a comprehensive development agreement and negotiations to promote fairness, obtain private participants in projects, and promote confidence among those participants.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.209 and §228.013.

*§27.90. Purpose.*

Transportation Code, §228.013 requires, for certain department toll projects in which a private entity has a financial interest in the project's performance, that the distribution of the project's financial risk, the method of financing for the project, and the tolling structure and methodology be determined by a committee comprised of representatives from the department, any local toll project entity for the area in which the project is located, the applicable metropolitan planning organization, and each municipality or county that provides revenue or right of way for the project. This subchapter prescribes the process for a committee's issuance of its determination.

*§27.91. Definitions.*

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Availability payment contract--A comprehensive development agreement under which payments are made to a private entity from project and other revenue to compensate the private entity for capital, operating, and financial costs, which may be based on the private entity's performance under the agreement.

(2) Commission--The Texas Transportation Commission.

(3) Committee--A committee established under this subchapter.

(4) Comprehensive development agreement--An agreement with a private entity that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of a toll project and may also provide for the financing, acquisition, maintenance, or operation of a toll project.

(5) Concession agreement--A comprehensive development agreement under which a private entity agrees to develop, finance, and construct a toll project, and to assume operation or maintenance responsibilities for a toll project, in exchange for rights to revenue of the project.

(6) Department--The Texas Department of Transportation.

(7) Executive director--The executive director of the department or the executive director's designee.

(8) Local funds--Funds of a city or county, any other funds paid by a city or county to meet local participation requirements, and money deposited in a subaccount created under Transportation Code, §228.012.

(9) Local toll project entity--Has the meaning assigned by Transportation Code, §373.001.

(10) Metropolitan planning organization--The organization or policy board of an organization created and designated under 23 U.S.C. §134 and 49 U.S.C. §5303, as amended, to make transportation planning decisions for a metropolitan planning area in which a toll project is located and to carry out the metropolitan transportation planning process.

(11) Toll project--Has the meaning assigned by Transportation Code, §201.001.

*§27.92. Financial Terms.*

(a) Applicability. This subchapter applies only to a toll project that will be developed under a concession agreement or an availability payment contract, and for which:

(1) funds allocated to a metropolitan planning organization are expected to be used to pay for project costs;

(2) local funds are expected to be used to pay for project costs; or

(3) property of a city or county is expected to be used as project right of way or a city or county is expected to pay for the acquisition of right of way for the project.

(b) Membership of committee. The membership of a committee shall be determined after the commission authorizes the department to initiate a procurement for a toll project that provides for the potential delivery of the project through a concession agreement or an availability payment contract. A committee consists of the following members:

(1) one member appointed by each metropolitan planning organization within whose boundaries all or part of the proposed project may be located;

(2) one member appointed by each local toll project entity within whose boundaries all or part of the proposed project may be located;

(3) one member appointed by each city and county with which the department intends to enter into an agreement under which the city or county will provide local funds to pay for right of way acquisition or other project costs or to acquire right of way for the project, or will provide property of the city or county for use as project right of way; and

(4) one member appointed by the executive director to represent the department.

(c) Officers. The commission may appoint a chair and vice-chair or may delegate to a committee the responsibility for electing a chair and vice-chair by majority vote of the members of the committee.

(d) Duties. A committee established under this subchapter shall submit a report to the executive director before the date the department issues a request for qualifications for the toll project, except for a project for which the department and a local toll project entity have agreed on the terms and conditions for the project under Transportation Code, §228.0111, or for which a local toll project entity has waived its option to develop, construct, and operate the project, in which case the report shall be submitted before the date the department issues a request for proposals for the project. A report shall contain the following determinations:

(1) the distribution of project financial risk, which is the allocation of revenue risk for a toll project between the department and the private entity with which the department enters into an agreement for the project;

(2) the method of financing for the project, which is a determination of whether the project should be funded with private or public funding or a combination of private and public funding; and

(3) unless the project is subject to a regional tolling policy or the terms and conditions of a market valuation agreement or market valuation waiver agreement, the project's tolling structure and methodology.

(e) Failure to submit report. If a committee does not submit a report by the date the department is scheduled to issue a request for qualifications or request for proposals, as applicable, for a project, the department will use any business terms applicable to the project that have been adopted by the metropolitan planning organization and that relate to the determinations to be included in the report.

(f) Meetings.

(1) Meeting requirements. The department's Office of General Counsel will submit to the Office of the Secretary of State notice of a meeting of the committee at least eight days before the date of the meeting. The notice will provide the date, time, place, and purpose of the meeting. A meeting of a committee will be open to the public. A committee will follow the agenda set for each meeting under paragraph (2) of this subsection.

(2) Scheduling of meetings. Meeting dates, times, places, and agendas will be set by the office designated under subsection (g) of this section. Any committee member may suggest an agenda item, provided that the agenda item must be approved by the chair of the committee and the department. A committee may only discuss items that are within the committee's jurisdiction. The office designated under subsection (g) of this section will provide notice of the time, date, place, and purpose of meetings to the members, by mail, email, telephone, or any combination of the three, at least eight calendar days before each meeting. All meetings must take place in Texas and must be held in a location that is readily accessible to the general public.

(3) Committee action. A quorum of the committee is one half or more of the number of members appointed to the committee. A committee may act only by majority vote of the members present at the meeting and voting.

(4) Record. Minutes of all committee meetings shall be prepared and filed with the executive director. The complete proceedings of all committee meetings must also be recorded by electronic means.

(5) Public information. All minutes, transcripts, and other records of the advisory committees are records of the department and as such, are subject to disclosure under the provisions of Government Code, Chapter 552.

(g) Administrative support. For each committee, the executive director will designate an office or division of the department that will be responsible for providing any necessary administrative support essential to the functions of the committee. The department will provide project information and other information to the committee to assist the committee in carrying out its duties, including the project procurement schedule.

(h) Duration. After a committee submits the report described in subsection (d) of this section, the committee ceases to exist. The department may, in its discretion, reconvene a committee if changed circumstances may result in a change in the committee's determinations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102491
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 14, 2011
For further information, please call: (512) 463-8683

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# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 22. EXAMINING BOARDS

### PART 7. STATE COMMITTEE OF EXAMINERS IN THE FITTING AND DISPENSING OF HEARING INSTRUMENTS

### CHAPTER 141. FITTING AND DISPENSING OF HEARING INSTRUMENTS

**22 TAC §141.16**

The Executive Commissioner of the Health and Human Services Commission, on behalf of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments Department of State Health Services, withdraws the proposed amendment to 22 TAC §141.16, concerning the licensing and regulation of fitters and dispensers of hearing instruments, which appeared in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11785).

Filed with the Office of the Secretary of State on June 28, 2011.

TRD-201102442
Ken Haesly
Chair
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments
Effective date: June 28, 2011
For further information, please call: (512) 776-6972

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## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

### CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

### SUBCHAPTER X. PREFERRED PROVIDER PLANS

**28 TAC §3.3712**

The Texas Department of Insurance withdraws the proposed new §3.3712 which appeared in the January 28, 2011, issue of the *Texas Register* (36 TexReg 333).

Filed with the Office of the Secretary of State on June 29, 2011.

TRD-201102473
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 29, 2011
For further information, please call: (512) 463-6327

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# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

## PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

## CHAPTER 354. MEDICAID HEALTH SERVICES

## SUBCHAPTER A. PURCHASED HEALTH SERVICES

## DIVISION 32. TEXAS MEDICAID WELLNESS PROGRAM

**1 TAC §§354.1415 - 354.1417**

The Texas Health and Human Service Commission (HHSC) adopts amendments to §354.1415, Vendor Requirements and Conditions for Participation; §354.1416, Eligibility Criteria; and §354.1417, Definitions for Texas Medicaid Wellness Program Services, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1411) and will not be republished.

Background and Justification

Section 32.057 of the Human Resources Code requires HHSC to make disease management programs available to Medicaid clients with diseases or chronic conditions. Section 32.057 further states that a disease management program should meet the following minimum requirements:

(1) use disease management approaches that are based on evidence-supported models, standards of care in the medical community and clinical outcomes;

(2) ensure that a recipient's primary care physician and other appropriate specialty positions, registered nurses, advanced practice nurses or physician assistants become directly involved with the disease management program through which the recipient receives services; and

(3) include a written guarantee of state savings on expenditures for the group of Medicaid recipients covered by the program.

To meet this direction, HHSC began a traditional disease management program in November 2004. This program was designed to serve Medicaid fee-for-service clients diagnosed with one or more of the following chronic diseases: asthma, coronary artery disease, congestive heart failure, chronic obstructive pulmonary disease, and diabetes.

Recently, the entire disease management community has shifted its emphasis from disease management to health management by moving away from the traditional approach of enrolling patients based on a specific set of diagnoses or conditions toward programs that provide holistic interventions for those patients at the highest risk of utilization of medical services. In August 2009, HHSC published a Request for Proposals (RFP) for the Texas Medicaid Health Management (TMHM) program, now known as the Texas Medicaid Wellness Program, based on this updated philosophy.

In accordance with the RFP's requirements, the Texas Medicaid Wellness Program will focus on three main components: client self-management, provider practice/delivery system design, and technological support. Under client self-management, a client becomes an informed and active participant in the management of his or her physical and mental health conditions and co-morbidities. Under the provider practice/delivery system design approach, medical home providers take an active role in helping their patients make informed healthcare decisions. Finally, the foundation for the success of the program includes technology, such as the use of predictive modeling, to identify potential program patients and providers.

The amendments are adopted to align HHSC's administrative rules with its revised approach to health management, while at the same time ensuring that the Texas Medicaid Wellness Program complies with the requirements set forth in §32.057 of the Human Resources Code.

Comments

The 30-day comment period ended April 3, 2011. During this period, HHSC received comments regarding the proposed amendments from the National Association of Chain Drug Stores and the Texas Federation of Drug Stores, via a joint letter, and also from Health Management Associates. A summary of comments relating to the rules and HHSC's responses follow.

Comment: The National Association of Chain Drug Stores and the Texas Federation of Drug Stores urged HHSC to include community pharmacists among providers of Texas Medicaid Wellness Program services, stating that pharmacists can perform medication therapy management and identify problems of non-adherence.

Response: The vendor that HHSC selected to administer the Texas Medicaid Wellness Program has hired a pharmacist and a pharmacy technician to address issues of non-adherence, medication reconciliation, consulting for providers and nurses, and review of drug-to-drug interactions. HHSC did not change the proposed rule language in response to the comment.

Comment: Health Management Associates asked why the name of the program changed from Disease Management to the Medicaid Wellness Program.

Response: HHSC changed the name of the program to the Texas Medicaid Wellness Program to align with emerging chronic care terminology and use a positive program name while

accurately reflecting the program services and retaining a "plain language" format. The new program incorporates elements of preventive health including measures of certain U.S. Preventive Services Task Force (USPSTF) wellness screens along with self-management education and services such as weight loss programs. HHSC did not change the proposed rule language in response to the comment.

Comment: Health Management Associates asked whether the hired medical personnel receive cultural sensitivity training.

Response: All vendor staff interacting with Texas Medicaid clients are required to undergo cultural sensitivity training by the vendor, specific to Texas. In addition, most medical personnel undergo this training within their professional education. HHSC did not change the proposed rule language in response to the comment.

Comment: Health Management Associates asked why HHSC replaced "scientific information and standardized best practices" with "evidence-based clinical practice guidelines."

Response: The term "evidence-based clinical practice guidelines" is simply the health care nomenclature for scientific standardized best guidelines--guidelines that have been established as a best practice and are typically adopted by a specialty medical society or association. HHSC did not change the proposed rule language in response to the comment.

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2011.

TRD-201102444
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 19, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 424-6900

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## DIVISION 33. TELEMEDICINE SERVICES

**1 TAC §354.1430**

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §354.1430, concerning Definitions, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2643) and will not be republished.

Background and Justification

HHSC is adopting the amendment to increase patient access to telemedicine pediatric specialty and subspecialty services for Medicaid recipients under the age of 21. These services will now be available statewide. This means that children across the state will be able to access pediatric specialty and subspecialty services at patient site locations that are not in a rural or underserved area. The patient site locations are: physician offices, hospitals, rural health clinics (RHCs), federally qualified health centers (FQHCs), intermediate care facilities for persons with mental retardation (ICFs/MR) that are not state-supported living centers, community centers as defined in Health and Safety Code §534.001 and outreach sites associated with a community center, local health departments established under Health and Safety Code §121.031, and public health districts established under Health and Safety Code §121.041. The distant site provider must be a physician who is Board-certified or Board-eligible in a nationally recognized specialty or subspecialty and who is not a primary care provider.

Comments

HHSC did not receive any comments regarding the proposed amendment.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201102446
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 19, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 424-6900

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# CHAPTER 355. REIMBURSEMENT RATES

## SUBCHAPTER J. PURCHASED HEALTH SERVICES

## DIVISION 3. PHYSICIAN SERVICES

**1 TAC §355.8043**

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §355.8043, concerning Supplemental Payments for Physician Services, without changes to the proposed text as published in the April 29, 2011, issue of the *Texas Register* (36 TexReg 2645) and will not be republished.

Background and Justification

The amendment is adopted to allow HHSC to make Medicaid supplemental payments to physicians who are employed by or under contract with a physician group practice organized by, under the control of, or under contract with a non-profit, tax-exempt hospital where both the hospital and the physician group practice provide medical education under contract with a state-owned medical school. The amendment specifically includes any group practice affiliated with Scott and White Memorial Hospital.

The state funds required to draw down federal matching funds for any group practice affiliated with Scott and White Memorial Hospital will be provided through intergovernmental transfers of public funds by Texas A&M University.

HHSC will not make supplemental payments to any hospital or group practice that is newly eligible under this amendment until the Medicaid state plan amendment has been approved by the Centers for Medicare and Medicaid Services.

Comments

The 30-day comment period ended on May 29, 2011. During this period, HHSC received no comments regarding the amendment.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Human Resources Code §32.021, and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102474
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 20, 2011
Proposal publication date: April 29, 2011
For further information, please call: (512) 424-6900

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## DIVISION 34. DISEASE MANAGEMENT PROGRAM

### 1 TAC §355.8640

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.8640, concerning Reimbursement for the Disease Management Program, without changes to the proposed text as published in the March 4, 2011, issue of the *Texas Register* (36 TexReg 1417) and will not be republished.

Background and Justification

The repealed rule describes the payment structure for the Medicaid disease management program, as well as the percentage of the disease management vendor's fees that are placed at risk if the vendor does not meet targeted savings and performance measures. The payment structure and at-risk fee components are specific to the former disease management program, which HHSC is replacing with the successor Texas Medicaid Health Management program, also known as the Texas Medicaid Wellness Program. HHSC and the selected program vendor will negotiate a new payment structure, including new at-risk components and performance measures. The repeal is adopted to avoid potential confusion regarding the application of the rule to the successor program.

Comments

The 30-day comment period ended April 3, 2011. During this period, HHSC did not receive comments regarding the proposed rule repeal.

Statutory Authority

The repeal is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.057 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2011.

TRD-201102445
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 19, 2011
Proposal publication date: March 4, 2011
For further information, please call: (512) 424-6900

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## CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY
## SUBCHAPTER G. LEGAL ACTION RELATING TO PROVIDERS OF MEDICAL ASSISTANCE
## DIVISION 4. ADMINISTRATIVE SANCTIONS

### 1 TAC §371.1685

The Texas Health and Human Services Commission (HHSC) adopts the amendment to §371.1685, Use of Criminal History Record Information, without changes to the proposed text as published in the April 22, 2011, issue of the *Texas Register* (36 TexReg 2587) and, therefore, the section will not be republished.

Background and Justification

Human Resources Code §32.0322, relating to criminal history record information, provides the authority for HHSC or its Inspector General to perform criminal history checks on providers or persons applying to enroll as providers (applicants) in the Texas Medicaid program. If such a criminal history check reveals that an applicant or provider has been convicted of an offense listed in the rule, the applicant or provider is not eligible to participate in the Medicaid program. Section 371.1685 identifies specific offenses or types of offenses and provides that a conviction of aggravated assault or sexual assault (excludable offenses) renders an applicant or provider ineligible to participate in the Medicaid program. Conviction of aggravated sexual assault, however, was not included in the list of excludable offenses.

HHSC is adopting this amendment to correct what is thought to have been an inadvertent omission. The amendment makes a conviction of an offense under §22.021, Texas Penal Code, aggravated sexual assault, a conviction that renders an applicant or provider ineligible to participate in the Texas Medicaid program.

Comments

HHSC received no comments regarding adoption of the amendment.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient operation of the Medicaid program; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 28, 2011.

TRD-201102427
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: July 18, 2011
Proposal publication date: April 22, 2011
For further information, please call: (512) 424-6900

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# TITLE 10. COMMUNITY DEVELOPMENT

## PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

### CHAPTER 1. ADMINISTRATION

### SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

**10 TAC §1.19**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC §1.19, concerning Deobligated Funds, with changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3147) and will be republished.

The purpose for the amendments is to incorporate program changes, preexisting guidance and state and federal statutory requirements.

The Board approved the final order adopting the amended section on June 30, 2011.

The Department accepted public comments between May 20, 2011 and June 20, 2011. Comments regarding the amendments were accepted in writing and by email. No comments were received concerning the proposed amended section.

The amended section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

*§1.19. Deobligated Funds.*

(a) Purpose. The Governing Board and the Department seek to facilitate the use of public funds to provide for safe decent and affordable housing for Texans in a timely manner. From time-to-time, it becomes necessary to make changes to previously awarded funds to either expedite the delivery of the funds, meet state or federal guidelines or statutes, or to meet unexpected needs like disaster relief or leveraging of additional funds. To best achieve these goals, the Department has determined that a policy is necessary to provide the public with clear and consistent rules as to how Deobligated Funds occur, the reporting of Deobligated Funds and how the Department will treat Deobligated Funds after an initial award has been made. The funds covered by this section are previously awarded funds under a program administered by the Department, or funds that become available to the Department through program income. The purposes of this section are:

(1) To establish procedures and Board policy on the events creating Deobligated Funds for applicable Department programs;

(2) To identify standards for reporting and maintaining Deobligated Fund balances; and

(3) To provide guidance for the reprogramming and reobligation of Deobligated or otherwise unexpended funds and program income.

(b) Definitions.

(1) Administrator--A unit of government, non-profit entity or other party who has a written signed Agreement with the Department committing the Department to provide funds upon the completion of certain actions called for in the Agreement.

(2) Agreement--A written executed agreement between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(3) Contract--A written executed contract between the Department and an Administrator or Contractor outlining the obligations of all parties involved in the related transaction.

(4) Contractor--A party who has a Contract with the Department to administer a program using funds provided under explicit terms and conditions in a written Contract with the Department.

(5) Deobligated Funds--The funds released by an Administrator or Contractor or recovered by the Department canceling a contract or award involving some or all of a contractual financial obligation between the Department and an Administrator or Contractor.

(6) Department--The Texas Department of Housing and Community Affairs as authorized in Chapter 2306 of the Texas Government Code.

(7) Expenditure--Approved expense evidenced by documentation submitted by the Administrator or Contractor to the Department for purposes of drawing funds from HUD's Integrated Disbursement and Information System (IDIS) for work completed, inspected and certified as complete, and as otherwise required by the Department.

(8) Executive Director--The person hired by the Governing Board with administrative duties to manage the affairs of the Department as provided under Texas Government Code §2306.036.

(9) Governing Board--The Governing Board of the Department.

(10) HOME--The HOME Investment Partnership Program at 42 United States Code §§12701-12839 and the regulations promul-

gated thereafter at 24 CFR Part 92 and governed by the Rules in 10 TAC §53.50.

(11) Housing Trust Fund--The fund created under Texas Government Code §2306.201 and governed by the Rules found at 10 TAC §51.1.

(12) HUD--United States Department of Housing and Urban Development.

(13) Program Income--Funds generated through the activities related to a program that are made available to the Department for use in funding authorized actions of the Department.

(14) Neighborhood Stabilization Program or "NSP" as authorized by the Housing and Economic Recovery Act of 2008 as an adjunct to the Community Development Block Grant Program. Housing and Economic Recovery Act of 2008, Pub. L. 110-289, 112 STAT 2850. It also refers to funds provided under §1497 of the Wall Street Reform and Consumer Protection Act of 2010 (Pub. L. 111-203, approved July 21, 2010) ("Dodd-Frank Act") and to future allocations from HUD.

(c) Events Creating Deobligated Funds.

(1) The Department reserves the right to release their commitment to any Administrator or Contractor resulting in Deobligated Funds in the event of any one of the following circumstances:

(A) Department has notified Administrator or Contractor of any outstanding compliance issues and the Administrator or Contractor has failed to either resolve the issue or take sufficient action to correct the compliance matter;

(B) Department has notified Administrator or Contractor that they have failed to meet the required timelines and/or commitment deadlines, including Expenditure of funds, per the Agreement or Contract and Administrator or Contractor has not sufficiently corrected the deficiency;

(C) The Department provides notice of default to Administrator or Contractor on any Agreement or Contract by and between Administrator and Contractor and the default has not been cured within the required time frame;

(D) Applicant materially misrepresents facts to the Department during an application process, award of contract, request for amendment, or administration of any contract;

(E) Department has notified Administrator or Contractor of their inability to provide adequate financial support to administer the contract as called for in the Agreement or Contract or meet any other material conditions and the Administrator or Contractor has failed to sufficiently correct the matter;

(F) Department has notified Administrator or Contractor of their inadequate or insufficient management controls and the Administrator or Contractor has failed to sufficiently correct the matter;

(G) Administrator or Contractor declines funds;

(H) Administrator or Contractor fails to expend all funds awarded and voluntarily releases the funds;

(I) Program income received by the Department that is used in lieu of awarded contract funds; or

(J) Other circumstances approved by the Board as warranting Deobligation.

(2) The Department shall have the sole discretion to determine whether sufficient progress or cure has been made under paragraph (1)(A) - (C) of this subsection and the sole discretion to determine what constitutes materiality in paragraph (1)(D) of this subsection, subject to appeal under 10 TAC §1.7.

(3) During the pendency of a challenge of an event described under paragraph (1) of this subsection by Administrator or Contractor, the Department shall not take any action resulting in Deobligated Funds until an appeal as provided for under 10 TAC §1.7 has been completed. The Department may suspend reimbursement of funds during the appeal. If an appeal has not been requested, the Department may take action as allowed under this policy.

(d) Maintenance of Deobligated Funds.

(1) The Department will produce a report for the Executive Director and the Board related to Deobligated Funds separate from original balances and program income, including fees earned and loan repayments, as part of the accounting of program funds at both the program and Department level.

(2) The Department will ensure that HOME Deobligated Fund balances are reconciled at least monthly against the unexpended fund balances maintained by HUD. The Department shall confirm balances with HUD prior to recommendation to the Board for the use of any Deobligated Funds.

(3) Housing Trust Fund Deobligated Funds, or any other Deobligated Funds deriving from a state general revenue source, will be included in the report in paragraph (1) of this subsection, but shall not be used to establish reserve balances. The Department will initiate efforts to reprogram and reassign Deobligated Funds from the Housing Trust Fund or any other state general revenue source within three months of Deobligation upon reaching a cumulative amount of Deobligated Funds that facilitates reprogramming.

(4) The Department shall not retain Deobligated Funds from any program in any amount that exceeds 15% of the most current annual allocation for three consecutive months and must initiate efforts to reprogram or reassign funds in excess of that standard within 90 days of the figure reaching the 15% threshold. For purposes of determining the 15% threshold, funds that are subject to disbursement under a Notice of Federal Funding, but are not yet committed are not included in the 15% threshold. Submitting a proposal for reprogramming or reassigning Funds to the Board for approval shall constitute an initiation of efforts.

(e) Reassignment of Funds. Under this policy, the Governing Board and the Department, intend to create a policy to direct staff and the public on the uses of funds that are either characterized as Deobligated Funds under this policy or Program funds.

(1) The Department shall not recommend to reprogram or reassign Deobligated Funds from the HOME Program or other programs with Deobligated Funds other than state general revenue funds described in subsection (d)(3) of this section for purposes other than disaster relief unless the remaining Deobligated Fund balance after reprogramming of funds is an amount equivalent to or greater than 5% of the most current annual allocation of such funds, for example the annual allocation of HOME funds from HUD.

(2) NSP funds may be partially or wholly Deobligated from contracts and must be reassigned to NSP-eligible uses as determined by HUD.

(3) It is the policy of the Department that funds not reserved for disaster relief may be used for any of the activities listed below as needed in the Department's discretion subject to the approval of the Governing Board:

(A) Successful appeals related directly to the program funds available as allowable under program rules and regulations;

(B) Leveraging of funds with other local, state or federal resources for applications made to the Department for any one or more of the programs operated by the Department;

(C) Funding of projects identified as beneficial by the Department and identified in a Notice of Funding Availability approved by the Board;

(D) Disaster relief including but not limited to disaster declarations or documented extenuating circumstances such as imminent threat to health and safety;

(E) Funding of applications for program funds on existing Department waiting lists or reservation systems;

(F) Funding to existing previously awarded eligible contracts in need of additional resources for circumstances considered unique or extenuating by the Department's Board;

(G) Funding of applications or programs that serve individuals with special needs;

(H) Settlement of litigation or HUD compliance matters;

(I) Use in Asset Resolution/Enforcement Rule activities;

(J) Funding applications or programs that serve Colonias; or

(K) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

(f) After adoption in final form and publication in the *Texas Register,* this policy shall supersede any other rule or policy governing the use of Deobligated Funds for the Department regardless of where published, unless any portion of this rule conflicts with statutory language or Federal rules, in which case those shall be controlling.

(g) Any portion of this rule may be waived for good cause by the Governing Board of the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102509
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Effective date: July 21, 2011
Proposal publication date: May 20, 2011
For further information, please call: (512) 475-3916

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**10 TAC §1.20**

The Texas Department of Housing and Community Affairs (the "Department") adopts the repeal of 10 TAC §1.20, concerning Asset Resolution and Enforcement, without changes to the proposal as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3149) and will not be republished.

This repeal of the current 10 TAC §1.20 allows the Department to separately adopt a new rule that will improve the efficiency of the Asset Review Committee and focus the scope of its authority.

The Board approved the final order adopting the repealed section on June 30, 2011.

The public comment period ran from May 20, 2011 to June 20, 2011. No comments were received.

This repeal is adopted pursuant to authority under §2306.142 of the Texas Government Code, which provides that the Department may adopt rules regarding the making of mortgage loans, the regulation of borrowers, and the resale or disposition of real property, or an interest in the property that is financed by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2011.

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Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
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Proposal publication date: May 20, 2011
For further information, please call: (512) 475-3916

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**10 TAC §1.20**

The Texas Department of Housing and Community Affairs (the "Department") adopts new 10 TAC §1.20, concerning the Asset Review Committee, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3149) and will not be republished.

The purposes of this new rule are to abolish the existing Review Committee, as established in the current 10 TAC §1.20, and establish a new Asset Review Committee that operates under a more efficient structure and reduced scope of authority; to remove debarment recommendation authority from the Review Committee, and to eliminate the authority of the Review Committee to impose penalty actions for the non-performance of Department contracts. Under new 10 TAC §1.20, the role of the new Asset Review Committee will be limited to resolving issues with the Department's single and multifamily loan portfolio.

The Board approved the final order adopting the new section on June 30, 2011.

Public comments were accepted between May 20, 2011 and June 20, 2011. No comments were received.

The new section is adopted pursuant to authority under §2306.142 of the Texas Government Code which provides that the Department may adopt rules regarding the making of mortgage loans, the regulation of borrowers and the resale or disposition of real property, or an interest in a property, that is financed by the Department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102507

Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Effective date: July 21, 2011
Proposal publication date: May 20, 2011
For further information, please call: (512) 475-3916

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## CHAPTER 9. TEXAS NEIGHBORHOOD STABILIZATION PROGRAM

**10 TAC §§9.1 - 9.7**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 9, §§9.1 - 9.6 and new §9.7, concerning the Texas Neighborhood Stabilization Program, without changes to the proposed text as published in the May 20, 2011, issue of the *Texas Register* (36 TexReg 3151) and will not be republished.

The purpose for the amendments and new section is to incorporate program changes, preexisting guidance and state and federal statutory requirements.

The Department accepted public comments between May 20, 2011 and June 20, 2011. Comments regarding the amendments and new section were accepted in writing and by email. No comments were received concerning the proposed amendments and new section.

The Board approved the final order adopting the amendments and new section on June 30, 2011.

The amendments and new section are adopted pursuant to the authority of the Texas Government Code, Chapter 2306 which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102510
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Effective date: July 21, 2011
Proposal publication date: May 20, 2011
For further information, please call: (512) 475-3916

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## CHAPTER 60. COMPLIANCE ADMINISTRATION
## SUBCHAPTER B. ACCESSIBILITY REQUIREMENTS

**10 TAC §60.202**

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 60, Subchapter B, §60.202, concerning Accessibility Requirements. Section 60.202 is adopted with changes to the proposed text as published in the March 18, 2011, issue of the *Texas Register* (36 TexReg 1787). Specifically, the amendment changes the definition of a multifamily housing project to include single family projects.

The amendment brings Department policy and rules in line with HUD guidance issued during the Tax Credit Assistance Program ramp-up in "TCAP Questions and Answers: §504 of the Rehabilitation Act of 1973..." which notes "five single family units covered by a single contract or a single building with five units each constitute a multifamily housing project."

The public comment period ran through April 7, 2011. One comment was received from Kevin Jewell with the Texas Low Income Housing Information Service.

REASONED RESPONSE TO PUBLIC COMMENT AND STAFF RECOMMENDATION ON THE PROPOSED ADOPTION OF THE AMENDMENT TO 10 TAC CHAPTER 60, SUBCHAPTER B, §60.202, ACCESSIBILITY REQUIREMENTS.

§60.202(5). Multifamily housing project.

PUBLIC COMMENT: Commenter recommended new language to the proposed amendment as follows: A project may consist of a single building with five or more units or may consist of five or more units in multiple buildings with one or more units.

STAFF RESPONSE: Staff agreed with the comment and made the suggested change.

The Board approved the final order adopting the amended section on June 30, 2011.

The amended section is adopted pursuant to the authority Chapter 2306 of the Texas Government Code, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

*§60.202. Definitions.*

The following terms are used for purposes of this subchapter:

(1) Accessible route--A continuous unobstructed path connecting accessible elements and spaces in a facility or building that complies with the space and reach requirements of an applicable accessibility standard. In cases of rehabilitation, an accessible route is not required to serve units that are occupied by persons with hearing or vision impairments. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Accessible Route)*

(2) Alteration--Any physical change in a facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangements in structural parts and extraordinary repairs. It does not include normal maintenance or repairs, reroofing, interior decoration, or changes to mechanical systems. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Alteration)*

(3) Disability--A physical or mental impairment that substantially limits one or more major life activities; or having a record of such an impairment; or being regarded as having such an impairment. Nothing in this subpart requires that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Individual with Handicaps. 24 CFR §§100.201, 202(d))*

(4) Federal financial assistance--Any assistance provided or otherwise made available by the department through any grant, loan, contract or any other arrangement, in the form of:

(A) Funds;

(B) Services of personnel; or

(C) Real or personal property or any interest in or use of such property, including transfers or leases of the property for less than fair market value or for reduced consideration. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of Federal Financial Assistance)*

(5) Multifamily housing project--A project that includes five or more dwelling units. A project may consist of five single family homes or a single building with five units. A project may consist of a single building with five or more units or may consist of five or more units in multiple buildings with one or more units. A project includes the whole of one or more residential structures and appurtenant structures, equipment, roads, walks, and parking lots which are covered by a single contract or application for federal financial assistance, or which are treated as a whole for processing purposes, whether or not located on a common site. *(Source: 24 CFR Subtitle A Subpart A §8.3 Definitions. Definition of multifamily housing project and definition of project; TCAP Questions and Answers: §504 of the Rehabilitation Act of 1973) 24 CFR Part 8*

(6) Recipient--Includes a subrecipient and means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended for any program or activity directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. Recipients include private entities in partnership with recipients to own or operate a program or service. *(Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of recipient)*

(7) Replacement cost--The total development cost for construction and equipment for a newly constructed housing facility of the size and type being altered. Construction and equipment costs do not include the cost of land, demolition, site improvements, nondwelling facilities or administrative costs for project development activities. *(Source: 24 CFR Subtitle A Subpart A §8.4 Definitions. Definition of replacement cost)*

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 1, 2011.

TRD-201102511
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Effective date: July 21, 2011
Proposal publication date: March 18, 2011
For further information, please call: (512) 475-3916

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# TITLE 19. EDUCATION

## PART 2. TEXAS EDUCATION AGENCY

## CHAPTER 102. EDUCATIONAL PROGRAMS

## SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING COLLEGE AND CAREER READINESS SCHOOL MODELS

### 19 TAC §102.1093

The Texas Education Agency (TEA) adopts new §102.1093, concerning Texas Science, Technology, Engineering, and Mathematics (T-STEM) Academies. The new section is adopted without changes to the proposed text as published in the May 6, 2011, issue of the *Texas Register* (36 TexReg 2813) and will not be republished. The adopted new rule establishes the designation process for T-STEM Academies.

The High School Completion and Success Initiative Council (Council) was created by the 80th Texas Legislature, 2007, to identify strategic priorities and make recommendations to improve the effectiveness, coordination, and alignment of high school completion and college and workforce readiness efforts. The Council's strategic plan included recommendations for use of grant fund programs to support specific strategies, goals, and objectives.

Among the grant programs identified by the Council's strategic plan is the grant for T-STEM Academies. T-STEM Academies focus on improving instruction and academic performance in secondary school science- and mathematics-related subjects and increasing the number of students who study and enter STEM-related careers.

The Texas Education Code (TEC), §39.407, Strategic Plan, authorizes the commissioner of education to adopt rules as necessary to administer the strategic plan adopted by the Council, and the TEC, §39.416, Rules, authorizes the commissioner to adopt rules as necessary to administer the High School Completion and Success Initiative. Additionally, the TEC, §39.235, Innovative Grant Initiative for Middle, Junior High, and High School Campuses, authorizes the commissioner to establish a grant program under which grants are awarded to support the alignment of grants and programs to the strategic plan adopted under the TEC, §39.407. Funds from this innovative grant initiative are used to support T-STEM Academies.

Adopted new 19 TAC §102.1093 establishes in rule the requirements necessary for a school to be designated as a T-STEM Academy. The adopted rule includes definitions and provisions relating to application for and notification of designation as a T-STEM Academy, conditions of program operation, programs available to an approved T-STEM Academy, evaluation of programs, and renewal or revocation of authority.

In addition, the subchapter title for Chapter 102, Subchapter GG, was changed from "Commissioner's Rules Concerning Early College Education Program" to "Commissioner's Rules Concerning College and Career Readiness School Models."

The adoption establishes in rule the process through which a school may receive annual designation as a T-STEM Academy. The adoption also includes the requirement for annual evaluation through procedures established by the commissioner prior to the beginning of each school year. Each T-STEM Academy will be required to maintain documentation related to its designation application.

The TEA determined that there is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began May 6, 2011, and ended June 6, 2011. No public comments were received.

The new section is adopted under the TEC, §39.407, which authorizes the commissioner of education to adopt rules as necessary to administer the strategic plan adopted by the High School Completion and Success Initiative Council, and the TEC, §39.416, which authorizes the commissioner of education to adopt rules as necessary to administer the High School Completion and Success Initiative.

The new section implements the TEC, §§39.407, 39.416, and 39.235.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2011.

TRD-201102450
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 19, 2011
Proposal publication date: May 6, 2011
For further information, please call: (512) 475-1497

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# TITLE 25. HEALTH SERVICES

## PART 1. DEPARTMENT OF STATE HEALTH SERVICES

### CHAPTER 97. COMMUNICABLE DISEASES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §97.63, concerning immunization requirements in Texas elementary and secondary schools; §97.101 and §97.102, concerning statewide immunization of children; and the repeal of §97.221, concerning the Department of State Health Services Immunization Schedule. The amendment to §97.63 is adopted with changes to the proposed text as published in the January 7, 2011, issue of the *Texas Register* (36 TexReg 19). The amendments to §97.101 and §97.102 and the repeal of §97.221 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act), according to the schedule listed therein. Sections 97.63, 97.101, 97.102, and 97.221 have been reviewed, and the department has determined that §§97.63, 97.101, and 97.102 should continue to exist (with amendments as adopted) because rules on that subject are needed. However, the department is adopting the repeal of §97.221, for the reasons stated in the Section-by-Section Summary. Together, these adopted changes to the rules would more closely adhere to requirements in the enabling statute and more clearly distinguish immunizations required for school entry from immunizations which are recommended by the department but which are not required for school entry. The adopted amendments and repeal would not substantively change the immunizations required for school entry.

SECTION-BY-SECTION SUMMARY

Section 97.63.

In order to provide better clarity and accuracy concerning immunization requirements, and to better match the enabling statute, the department adopts rule amendments to §97.63. The title of the rule section is amended to reflect the fact that the rule has always contained immunization requirements regarding entry to child-care facilities, pre-kindergarten, and early childhood programs.

The rule is also amended with language to help clarify the distinction between immunization requirements and the department's immunization recommendations. This rule contains, and continues to contain under the adopted amendments, the vaccine school-entry requirements for Texas for the grade-levels referenced in the rule title (higher education requirements are found in §97.64 (relating to Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education), and are not a part of this rulemaking package). The adopted rule amendments make this clear and also state that persons can obtain copies of the department's immunization recommendations from the department's website (www.immunizetexas.com) or by writing to the given address (since this rulemaking action repeals §97.221, which contained the department's recommendations).

The adopted rule amendments in §97.63(1) provide greater clarity and readability regarding how to determine compliance with vaccine dose requirements, based on the individual child's birthday. Also, the cross-reference to §97.221 is deleted since that rule is repealed in this rulemaking action.

Amendments to §97.63(2)(A) are adopted to improve clarity and readability in the first sentence. Also, the cross-reference to §97.221 is deleted, since that rule is now repealed. In order to follow the same format as the remainder of the rule section, the vaccine requirements for child-care facilities, pre-kindergarten and early childhood programs are now actually listed out here in the rule, as opposed to being simply cross-referenced. There are no substantive changes adopted to the requirements themselves, they are simply being moved from §97.221 to §97.63(2)(A), with minor clarifications in the language. Doing so eliminates the need for a reader to go to a different rule to get these particular requirements and thus makes this entire rule section more user-friendly.

The word "current" was added in §97.63(2)(B)(vi) to clarify that the list of geographical areas which can be obtained from the department, as stated in the rule, will be a current list.

Section 97.101.

The department adopts amendments to §97.101 to avoid redundancy regarding vaccine requirements, improve clarity, and to ensure the rule properly reflects the enabling statute.

The titles of Subchapter D, and §97.101, are amended to more accurately reflect the content under each given the overall reorganization adopted in this rulemaking.

The adopted amendments to §97.101 rule text include deletion of the language contained in subsections (a), (b), (f), and (g).

One of the main reasons for the amendments adopted in this rulemaking is to more clearly differentiate between immuniza-

tions that are required for school entry versus immunizations that are recommended by the department but are not required for school entry (see full discussion in the paragraph regarding repeal of §97.221). As part of this effort to make those distinctions easier to understand for Texas parents, students, school nurses, etc., subsections (a) and (b) of §97.101 are hereby deleted. The required vaccines and doses for school entry are currently specified in §97.63 and §97.64 of this title, and nothing in this rulemaking changes that. Section 97.63 and §97.64 satisfy the Texas Health and Safety Code, §161.004(a), mandate that the department have vaccine requirements in rule. There has been confusion regarding the use of the phrase "immunization schedule" as it pertains to requirements versus recommendations. As part of this reorganization to make these distinctions more clear, §97.221 (which was called a "schedule" but actually contained only recommendations) is now repealed. Section 97.101(a) contained a cross-reference to §97.221 and was deleted. Remaining language in §97.101(a) and (b) was deleted as redundant and unnecessary.

Section 97.101(f) is deleted to better match Texas Health and Safety Code, §81.061, which articulates the power granted to the department regarding investigations and does not grant similar powers to other entities. The statutory provision at issue can stand alone regarding department investigative power, such that no rule language on the subject is needed here.

Section 97.101(g) is deleted because a cross-reference to §97.62 is no longer necessary or appropriate here, given the reorganization of the section. Nothing in this deletion affects the applicability of §97.62 itself.

The remaining rule amendments to §97.101 are for re-lettering purposes only, because of the reorganization of the section. The language, in what is now subsections (a), (b), and (c), remains in order to satisfy Texas Health and Safety Code, §161.004.

Section 97.102.

The department adopts an amendment to §97.102(a) to reflect the amendment in §97.63 that changes the rule title to "Immunization Requirements in Child-care Facilities, Pre-Kindergarten, Early Childhood Programs, and Texas Elementary and Secondary Schools," and amends the department's mailing address. Also, §97.102(b) is amended to reflect the correct rule title references.

Section 97.221.

Section 97.221 is repealed. Texas Health and Safety Code, §161.004, states that the department must promulgate childhood immunization requirements through adoption of an immunization schedule in rulemaking. The current department rules, which require certain immunizations for school entry, are found in §97.63 and §97.64. At the same time, vaccines recommended (but not required) by the department are currently articulated in §97.221, titled "Department of State Health Services Immunization Schedule." The use of the word "schedule" accompanying these recommendations has caused confusion, given the use of the word in Texas Health and Safety Code, §161.004 to state how immunization requirements must be written into rule. Under this statutory wording, the "schedule" is where requirements - not recommendations - must be located. Contributing to this problem is the fact that federal immunization recommendations are listed in a document called a "schedule." All of this has led to inconsistent terminology and problematic cross-references in the Texas rules as they exist today. These amendments and repeal correct those problems.

There is no statutory directive for department recommendations regarding immunizations to be contained in a rule, as opposed to being communicated to the public in a more informal manner. Therefore, in order to better adhere to the statutory wording, to be able to react more quickly to new developments in medicine, and to avoid confusion between requirements versus department recommendations, the department hereby repeals §97.221. Going forward, the department will make its recommendations for immunizations through its website in its ongoing public outreach regarding immunization in Texas. The department will continue making copies of recommendations regarding immunizations available to the public, upon request. Immunization school entry requirements for the State of Texas will remain in rule (as they are now), as required by Texas Health and Safety Code, §161.004, and other statutory provisions.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to comments received from four commenters during the comment period regarding the proposed rules. The commenters were public health workers and school nurses.

Two commenters supported the entire rulemaking package as proposed which included the Eula Independent School District (ISD) and Tidehaven ISD.

Two commenters who were generally supportive of the rules as proposed, but suggested some changes (as discussed in the summary of comments) included the San Antonio Metropolitan Health District and Pflugerville ISD.

Comments concerning §97.63.

Comment: Concerning Figure: 25 TAC §97.63(2)(A), a commenter suggested that because the age of the children listed in the table are not old enough for school entry, to change the table column title, "Child's age at child-care or school entry" to "Child's age at child-care, early childhood programs, or pre-kindergarten." This change will help to provide better clarity and avoid confusion concerning vaccine dosing requirements since the word "school" may be confused with those immunizations required for entry into elementary or secondary schools rather than entry into child-care, pre-kindergarten, or early childhood programs.

Response: The commission agrees that clarification is needed. The phrase "or school entry" is now removed, while the new language "early childhood programs, or pre-kindergarten" is added to the column title in Figure: 25 TAC §97.63(2)(A) to read as "Child's age at entry into child-care, early childhood programs, or pre-kindergarten."

Comment: A commenter generally supported the rule as proposed, but did have one comment regarding improving the readability and usability of the chart in Figure: 25 TAC §97.63(2)(A): "Regarding the Daycare Requirements, could they be posted for 36 months and 48 months as currently they are listed by 25 months and 36 months. There are students entering the school on their 3rd birthday under Early Childhood Programs. There is also the Pre-Kindergarten Programs which serve kids 48 months and older. Then, when the students go into Kindergarten, there are additional requirements. The programs are reflective of all school districts in Texas."

Response: The department disagrees with this recommended change to Figure: 25 TAC §97.63(2)(A). Adding new requirements into the Figure: 25 TAC §97.63(2)(A) chart for 36 months

and 48 months would not improve readability or usability since the chart currently includes the requirements for "25 months through 42 months" and "43 months but before Kindergarten entry," respectively. Since there are no changes in the immunization requirements at 36 months and 48 months, this change would be redundant. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

## SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

**25 TAC §97.63**

STATUTORY AUTHORITY

The amendment is authorized under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and §161.004 and §161.0041 regarding statewide immunization of children and associated logistics; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the section implements Government Code, §2001.039.

*§97.63. Immunization Requirements in Child-care Facilities, Pre-Kindergarten, Early Childhood Programs, and Texas Elementary and Secondary Schools.*

Every child in the state shall be vaccinated against vaccine-preventable diseases caused by infectious agents, in accordance with the following immunization schedule. While the department recommends that providers immunize children according to the recommendations found on the department's website at www.ImmunizeTexas.com, this section sets out minimum immunization requirements for school entry for the child. A copy of the current recommended schedule is available at www.ImmunizeTexas.com, or by mail by writing the Department of State Health Services, Mail Code 1946, P.O. Box 149347, Austin, Texas 78714-9347.

(1) For those vaccines for which it is stated in this section that a certain dose must be received on or after a certain birthday, a vaccine administered up to four days prior to the deadline is considered compliant with that deadline.

(2) For diseases listed below, a child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school.

(A) Children enrolled in child-care facilities, pre-kindergarten, or early childhood programs shall be immunized against: diphtheria, pertussis, tetanus, poliomyelitis, *Haemophilus influenzae* type b (Hib), measles, mumps, rubella, hepatitis B, hepatitis A, invasive pneumococcal, and varicella diseases. In recognition of the fact that immunization needs vary depending on the age of the child, the minimum number of doses required for each vaccine is indicated in the schedule below:

Figure: 25 TAC §97.63(2)(A)

(B) Students in kindergarten through twelfth grade shall have the following vaccines, according to the schedule listed.

*(i)* Poliomyelitis.

*(I)* Kindergarten entry. Students are required to have four doses of polio vaccine--one of which must have been received on or after the fourth birthday. Or, if the third dose was administered on or after the fourth birthday, only three doses are required. Four doses of oral polio vaccine (OPV) or inactivated poliovirus vaccine (IPV) in any combination by age four to six years old is considered a complete series, regardless of age at the time of the third dose.

*(II)* Polio vaccine is not required for persons eighteen years of age or older.

*(ii)* Diphtheria/Tetanus/Pertussis.

*(I)* Kindergarten entry. Students are required to have five doses of a diphtheria/tetanus/pertussis-containing vaccine-one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

*(II)* Students seven years of age or older. Students seven years of age or older are required to have at least three doses of a tetanus/diphtheria-containing vaccine, provided at least one dose was administered on or after the fourth birthday. Any combination of three doses of a tetanus/diphtheria-containing vaccine will meet this requirement.

*(III)* Tdap.

(-a-) For the school year (SY) 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have one dose of a tetanus/diphtheria-containing vaccine within the last ten years.

(-b-) Seventh grade. Beginning SY 2009 - 2010, students will be required to have one booster dose of a tetanus/diphtheria/pertussis-containing vaccine for entry into the 7th grade, if at least five years have passed since the last dose of a tetanus-containing vaccine. If five years have not elapsed since the last dose of a tetanus-containing vaccine at entry into the 7th grade, then this dose will become due as soon as the five-year interval has passed. Td vaccine is an acceptable substitute, if Tdap vaccine is medically contraindicated.

(-c-) Grades 8 - 12. Beginning SY 2009 - 2010, students who have not already received Tdap vaccine are required to receive one booster dose of Tdap when ten years have passed since the last dose of a tetanus-diphtheria-containing vaccine.

*(IV)* Children who were enrolled in school, grades K - 12, prior to August 1, 2004, and who received a booster dose of DTaP or polio vaccine in the calendar month of (or prior to) their fourth birthday, shall be considered in compliance with clause (i)(I) (polio) and clause (ii)(I) (DTaP) of this subparagraph.

*(iii)* MMR.

*(I)* For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have two doses of a measles-containing vaccine, and one dose each of rubella vaccine and mumps vaccine.

*(II)* Beginning SY 2009 - 2010, students are required to have two doses of MMR vaccine with the first dose received on or after the first birthday for the following grades and school years:

(-a-) SY 2009 - 2010: K;

(-b-) SY 2010 - 2011: K - 1;

(-c-) SY 2011 - 2012: K - 2;
(-d-) SY 2012 - 2013: K - 3;
(-e-) SY 2013 - 2014: K - 4;
(-f-) SY 2014 - 2015: K - 5;
(-g-) SY 2015 - 2016: K - 6;
(-h-) SY 2016 - 2017: K - 7;
(-i-) SY 2017 - 2018: K - 8;
(-j-) SY 2018 - 2019: K - 9;
(-k-) SY 2019 - 2020: K - 10;
(-l-) SY 2020 - 2021: K - 11; and
(-m-) SY 2021 - 2022: K - 12.

*(iv)* Hepatitis B.

*(I)* Students are required to have three doses of hepatitis B vaccine no later than entry into kindergarten.

*(II)* In some circumstances, the United States Food and Drug Administration may officially approve in writing the use of an alternative dosage schedule for this vaccine. Such an alternative regimen may be used to meet the requirements under this section only when alternative regimens are fully documented. Such documentation must include vaccine manufacturer and dosage received for each dose of that vaccine.

*(v)* Varicella.

*(I)* For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, students are required to have one dose of varicella vaccine received on or after the first birthday for grades K - 12.

*(II)* Beginning SY 2009 - 2010, students are required to have two doses of varicella vaccine received on or after the first birthday for the following grades and school years (Two doses are required if the child was thirteen years old or older at the time the first dose of varicella vaccine was received):

(-a-) SY 2009 - 2010: K, 7;
(-b-) SY 2010 - 2011: K - 1, 7 - 8;
(-c-) SY 2011 - 2012: K - 2, 7 - 9;
(-d-) SY 2012 - 2013: K - 3, 7 - 10;
(-e-) SY 2013 - 2014: K - 4, 7 - 11;
(-f-) SY 2014 - 2015: K - 5, 7 - 12; and
(-g-) SY 2015 - 2016: K - 12.

*(vi)* Hepatitis A.

*(I)* For the SY 2008 - 2009 through the end of any summer session of the SY 2008 - 2009, upon entry into kindergarten through third grade, two doses of hepatitis A vaccine are required for students attending a school located in a high incidence geographic area as designated by the department. The first dose shall be administered on or after the second birthday. A current list of geographic areas, for which hepatitis A is mandated for this time period, is available at www.ImmunizeTexas.com, or by mail request at Department of State Health Services, P.O. Box 149347, Austin Texas 78714-9347.

*(II)* For SY 2009 - 2010, students are required to have two doses of hepatitis A vaccine with the first dose received on or after the first birthday for the following grades and school years:

(-a-) SY 2009 - 2010: K;
(-b-) SY 2010 - 2011: K - 1;
(-c-) SY 2011 - 2012: K - 2;
(-d-) SY 2012 - 2013: K - 3;
(-e-) SY 2013 - 2014: K - 4;
(-f-) SY 2014 - 2015: K - 5;
(-g-) SY 2015 - 2016: K - 6;
(-h-) SY 2016 - 2017: K - 7;
(-i-) SY 2017 - 2018: K - 8;
(-j-) SY 2018 - 2019: K - 9;
(-k-) SY 2019 - 2020: K - 10;
(-l-) SY 2020 - 2021: K - 11; and
(-m-) SY 2021 - 2022: K - 12.

*(vii)* Meningococcal. Students are required to have one dose of meningococcal vaccine for the following grades and school years:

*(I)* SY 2009 - 2010: 7;

*(II)* SY 2010 - 2011: 7 - 8;

*(III)* SY 2011 - 2012: 7 - 9;

*(IV)* SY 2012 - 2013: 7 - 10;

*(V)* SY 2013 - 2014: 7 - 11; and

*(VI)* SY 2014 - 2015: 7 - 12.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2011.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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## SUBCHAPTER D. STATEWIDE IMMUNIZATION OF CHILDREN IN CERTAIN FACILITIES AND BY HOSPITALS, PHYSICIANS, AND OTHER HEALTH CARE PROVIDERS

**25 TAC §97.101, §97.102**

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and §161.004 and §161.0041 regarding statewide immunization of children and associated logistics; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the sections implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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## SUBCHAPTER J. DEPARTMENT OF STATE HEALTH SERVICES IMMUNIZATION SCHEDULE

**25 TAC §97.221**

STATUTORY AUTHORITY

The repeal is authorized under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and §161.004 and §161.0041 regarding statewide immunization of children and associated logistics; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the section implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
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## CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES--MENTAL HEALTH SERVICES
## SUBCHAPTER G. DETERMINATION OF MANIFEST DANGEROUSNESS

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§415.301 - 415.315 and the repeal of §415.316, concerning the Determination of Manifest Dangerousness without changes to the proposed text as published in the April 1, 2011, issue of the *Texas Register* (36 TexReg 2081) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments and repeal are necessary to comply with Health and Safety Code, §533.035(a) and §574.022; and Code of Criminal Procedure, Articles 46B and 46C, which require the department to operate a maximum security unit for individuals determined to be manifestly dangerous.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 415.301 - 415.316 have been reviewed and the department has determined that amendments were necessary to conform the rules to statute and current department operations. The department has determined that reasons for adopting the rules continue to exist because rules on this subject are needed. However, §415.316 is no longer necessary and is being repealed.

SECTION-BY-SECTION SUMMARY

Amendments to §415.301 include minor editorial revisions. An amendment to §415.302 revises a rule reference to §415.306(8) and removes mental retardation facility from the applicable facilities as proposed. Amendments to §415.303 define the terms and phrases used in the proposed rule relating to the assessment of risk for manifest dangerousness, commissioner, the department, the dangerousness review board, facility, hearing, mental health professional, and maximum security unit. Section 415.303 also removes the definitions of state mental retardation facility, TDMHMR, and the TDMHMR Review Board. An amendment to §415.304 and §415.315 revise the reference of Health and Safety Code, §593.044 to §574.022. Amendments to §§415.303, 415.305, 415.306, and 415.310 - 415.314 remove any references to TDMHMR and replace with DSHS. Amendments to §415.307 and §415.310 clarify that an assessment tool can be used to assess a risk of manifest dangerousness. Amendments to §415.308 and §415.309 revise the titles of the rules. Amendments to §§415.310, 415.312, and 415.314 remove the requirement for the Letter of Attestation. Amendments to §§415.303, 415.310, 415.312, and 415.315 correct the Code of Criminal Procedure Article references. Section 415.314 is also amended to include access of the Notice of Hearing by Facility Review Board and the Notice of Hearing by DSHS Dangerousness Review Board forms as an attached graphic. The repeal of §415.316 removes the requirement for distribution of the rules of this subchapter.

COMMENT

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

**25 TAC §§415.301 - 415.315**

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation

and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rules implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 2011.

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Lisa Hernandez
General Counsel
Department of State Health Services
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Proposal publication date: April 1, 2011
For further information, please call: (512) 776-6972

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**25 TAC §415.316**

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §571.006, which provides the Executive Commissioner of the Health and Human Services Commission with the authority to adopt rules as necessary for the proper and efficient treatment of persons with mental illness; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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# TITLE 34. PUBLIC FINANCE

## PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

### CHAPTER 3. TAX ADMINISTRATION

### SUBCHAPTER A. GENERAL RULES

**34 TAC §3.2**

The Comptroller of Public Accounts adopts amendments to §3.2, currently titled Application of Payments; Unjust Enrichment; and Refunds, which is adopted to be renamed Offsets and Application of Credits and Payments to Liabilities; Unjust Enrichment, without changes to the proposed text as published in the April 8, 2011, issue of the *Texas Register* (36 TexReg 2215). The section is being amended to memorialize in a formal rule long-standing agency policy with respect to the treatment of offsets and procedures for offset requests, as well as procedures for the application of credits.

The provisions of current subsections (a) and (b) regarding the application of payments are now incorporated into new subsection (b)(3). Current subsection (c) regarding unjust enrichment is unchanged. Current subsection (d) was originally added to §3.2 to implement House Bill 1, 78th Legislative Session, 2003, which was the appropriations bill, and specifically to establish administrative and procedural guidelines for the appropriation of refunds as per House Bill 1 for the 2004-2005 biennium. These special refund requirements have had no legal effect since September 1, 2005 and are therefore being proposed for deletion. The section is reorganized to reflect the proposed additions and deletions.

New subsection (a) provides definitions for terms used in the section. New subsection (b) concerns offsets and the application of credits and payments to liabilities. More specifically, subsection (b)(1) explains the information that must be provided in a request for any offset, along with how and when the request must be provided to the comptroller. Subsection (b)(2) explains when offsets are not allowed, including examples for how the comptroller will apply this section to certain fact patterns. Subsection (b)(3) explains how approved credits and payments will be applied.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to adopt rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements Tax Code, §111.060 (Interest on Delinquent Tax), §111.064 (Interest on Refund or Credit), §111.104 (Refunds), and §151.508 (Offsets).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201102476
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: July 20, 2011
Proposal publication date: April 8, 2011
For further information, please call: (512) 475-0387

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### SUBCHAPTER O. STATE SALES AND USE TAX

**34 TAC §3.322**

The Comptroller of Public Accounts adopts an amendment to §3.322, concerning exempt organizations, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11808). This amendment makes the following proposed changes:

Subsection (b)(1) clarifies longstanding agency policy that a nonprofit charitable or eleemosynary organization that devotes all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing medicine and medical treatment may qualify for exempt status. This subsection is also amended to explain agency policy that organizations may engage in activities that are technically not covered by the statutory exemption language but done in support of and incidental to the exempt activities specifically identified in the statutory exemption and still be considered for exempt status. Subsection (b)(10) is amended to implement Senate Bill 275, 78th Legislature, 2003, and Senate Bill 1515, 81st Legislature, 2009, which expand the definition of a "local organizing committee" that qualifies for exemption and redefine the term "games" to include events other than, and in addition to, the Pan American Games and Olympic Games, in accordance with Texas Civil Statutes, Title 83, Chapter 10, Article 5190.14. New subsection (b)(11) and (12) are relocated from current subsection (c)(6) and (7) to correct an error in the section about the correct categorization of the entities identified in these subsections. Subsection (b)(12) updates the statutory cite for the Development Corporation Act to reflect its current location in Local Government Code, Chapter 501, according to House Bill 2278, 80th Legislature, 2007.

Subsection (c)(8) is deleted to implement House Bill 387, 80th Legislature, 2007, which repealed Government Code, Chapter 465, the statutory basis for the Texas National Research Laboratory Commission, and the related sales tax exemption under Tax Code, §151.349.

Subsection (e) updates the procedures used to apply for an exemption to reference applications approved by the comptroller, to clarify which documents are required to apply for exempt status, and to clarify that additional information may be required by the comptroller for an organization to obtain exempt status.

Subsection (f)(1) and (2) clarify agency policy regarding the revocation, withdrawal, or loss of an exemption.

Subsection (g)(1) is amended to correct an error in the section related to the incorrect placement of entities currently identified in subsection (c)(6) and (7) which have now been correctly relocated to subsection (b)(11) and (12); subsection (g)(7) adds an exemption, in accordance with House Bill 2519, 78th Legislature, 2003, and Tax Code, §151.3105, for the purchase, rental or lease of certain bingo equipment by a nonprofit organization granted exemption under Internal Revenue Code, §501(c)(3), (4), (8), (10), or (19), if the bingo equipment will be used in conducting bingo authorized under Occupations Code, Chapter 2001. Subsection (g)(8) implements Senate Bill 1199, 81st Legislation, 2009, which adds new subsection (f) to Tax Code, 151.310, and provides new guidelines for organizations exempt from sales and use tax under §151.310 to claim refunds and credits. All other issues relating to exempt entities and refund claims are still covered by §3.325 of this title.

Subsection (h)(3) expresses agency policy concerning who is responsible for remitting sales tax when an exempt organization contracts with a private entity to sell taxable items belonging to the private entity during fundraising events; subsection (h)(5) adds the content of 34 TAC §3.341 (relating to Sales of Governmental Publications, Records, or Documents), which has been repealed.

Subsection (j) reflects updated information about diplomatic tax exemptions under international and federal law.

Nonsubstantive changes are made throughout the section to reflect accurate cross references to code provisions and section names, as well as to improve overall clarity and readability.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.309 (Governmental Entities), §151.310 (Religious, Educational, and Public Service Organizations), §151.3105 (Bingo Equipment Purchased by Certain Organizations), §151.337 (Sales by or to Indian Tribes), and Texas Civil Statutes, Article 5190.14 (Pan American Games; Olympic Games).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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**34 TAC §3.325**

The Comptroller of Public Accounts adopts the repeal of §3.325, concerning refunds, interest and payments under protest, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11814).

The existing §3.325 is being repealed so that the content can be updated in a new §3.325 to incorporate legislative changes and policy clarifications and to improve clarity and readability.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code, §111.064.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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**34 TAC §3.325**

The Comptroller of Public Accounts adopts new §3.325, concerning refunds and payments under protest, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11815). The new section replaces the existing §3.325, which is being repealed to update the content to reflect legislative changes and policy clarifications and to reorganize information to improve clarity and readability as follows:

Subsection (a) identifies who can file refund claims and the procedures for making those claims. Paragraph (1) explains refund claim requirements and procedures for non-permitted purchasers. It states expressly that a permitted seller can assign its right to refund to a non-permitted purchaser. Paragraph (2) explains refund claim requirements and procedures for permitted sellers. Pursuant to Senate Bill 1199, 81st Legislature, 2009, which created new Tax Code, §151.4261, paragraph (2)(A) reflects that a permitted seller is entitled to claim a credit or request a refund of sales tax equal to the amount of sales tax refunded to a purchaser when the purchaser receives a full or partial refund of the sales price of a returned taxable item. The agency recognizes that §151.4261 appears to conflict with existing Tax Code, §151.007(c)(2), but believes it is the legislature's intent that new §151.4261 is the controlling statute and is adopting this rule to implement that intent. Paragraph (3) explains refund claim requirements and procedures for permitted purchasers. It addresses longstanding policy that purchasers who claim refunds directly from the comptroller or take credits on returns must be permitted at the time of the transactions giving rise to the refund claim. It also explains that overpayments of tax in error may be calculated by a sample and projection methodology approved by the comptroller. Paragraph (4) defines what it means to "state fully and in detail" the requirements for filing a refund claim with the comptroller. Under Tax Code, §151.022, the provisions of this paragraph are prospective in application from the effective date of the rule and, therefore, will apply to refund claims filed on or after that date.

Subsection (b) explains the statute of limitations requirements for refund claims. It reflects the change made by House Bill 2425, 78th Legislature, 2003 that an informal review of a refund claim does not toll the statute of limitations for the same period and type of tax previously denied in part or in whole by the comptroller. It also provides a cross-reference to another section of this title with information about limitations on refund claims for organizations that are exempt from sales and use tax under Tax Code, §151.310, as required by Senate Bill 1199, 81st Legislature, 2009.

Subsection (c) identifies the types of transactions that are eligible for refund claims, the applicable interest rates, and how interest is calculated. It implements legislative changes made by Senate Bill 1570, 79th Legislature, 2005.

Subsection (d) explains how to determine when a refund claim is filed.

Subsection (e) explains a person's rights when the comptroller denies a refund claim.

Subsection (f) explains the requirements for making payments under protest prior to filing suit under Tax Code, Chapter 112.

No comments were received regarding adoption of the new rule.

This new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §111.064 (Interest on Refund or Credit), §111.104 (Refunds), §111.1042 (Tax Refund: Informal Review), §111.105 (Tax Refund: Hearing), §111.107 (When Refund or Credit is Permitted), §111.203 (Agreements to Extend Period of Limitation), §112.051 (Protest Payment Required), and §151.4261 (Credit or Reimbursement in Return Transactions).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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**34 TAC §3.339**

The Comptroller of Public Accounts adopts the repeal of §3.339, concerning statute of limitations, without changes to the proposed text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11817).

The existing §3.339 is being repealed so that the content can be updated in a new section §3.339 to incorporate legislative changes and policy clarifications, and to improve clarity and readability.

No comments were received regarding adoption of the repeal.

This repeal is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The repeal implements Tax Code §§111.017, 111.020, 111.1042, 111.107, 111.202, 111.203, 111.205, 111.2051, 111.206, 111,207, 151.507, 151.601, and 151.607.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ashley Harden
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Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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**34 TAC §3.339**

The Comptroller of Public Accounts adopts new §3.339, concerning statute of limitations, without changes to the proposed

text as published in the December 31, 2010, issue of the *Texas Register* (35 TexReg 11818). The new section replaces the existing §3.339, which is being repealed so that the content is updated to reflect legislative changes and policy clarifications, and to reorganize information to improve clarity and readability as follows:

Subsection (a)(1) defines the general statute of limitations for assessments and clarifies agency policy. Subsection (a)(2) identifies the exceptions to the general statute of limitations, including the 73rd Legislature, 1993, amendment to §111.205 concerning the definition of gross error. Subsection (a)(3) reflects the 73rd Legislature, 1993, repeal of §111.2054 and addition of §111.2051 relating to assessments when refunds are claimed.

Subsection (b) provides for an extension to the statute of limitations by agreement between the comptroller and a taxpayer and includes clarification of agency policy.

Subsection (c) reflects legislative changes made by House Bill 2425, 78th Legislature, 2003, relating to events that may toll the statute of limitations.

Subsection (d) provides a cross-reference to §3.325(b) of this title (relating to Refunds and Payment under Protest) which defines the statute of limitations for refund claims so that provisions relating to the statute of limitations and refund claims are located in one rule rather than two.

Subsection (e) defines the statute of limitations for the comptroller to make an assessment in cases of successor liability.

Subsections (f), (g), and (h) address limitations periods relating to suits for collection, notices of delinquency, and seizure, respectively.

Subsection (i) provides that the comptroller's remedies are cumulative.

No comments were received regarding adoption of the new rule.

The new section is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The new section implements Tax Code, §111.017 (Seizure and Sale of Property), §111.020 (Tax Collection on Termination of Business), §111.202 (Suit Limitation), §111.203 (Agreements to Extend Period of Limitation), §111.205 (Exception to Assessment Limitation), §111.2051 (Assessment When Refund is Claimed), §111.206 (Exception to Limitation: Determination Resulting From Administrative Proceeding), §111.207 (Tolling of Limitation Period), §151.507 (Limitations on Determination), §151.601 (Suit), and §151.607 (Limitation Period).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Comptroller of Public Accounts
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# TITLE 43. TRANSPORTATION

## PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

### CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

### SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

**43 TAC §9.42**

The Texas Department of Transportation (department) adopts amendments to §9.42, concerning Administrative Qualifications. The amendments to §9.42 are adopted with changes to the proposed text as published in the May 13, 2011, issue of the *Texas Register* (36 TexReg 3073).

EXPLANATION OF ADOPTED AMENDMENTS

Architectural, engineering, and surveying services are procured by the department in accordance with Government Code, Chapter 2254, Subchapter A, and Title 23, Code of Federal Regulations, §172.5.

The amendments clarify and refine the language to improve consistency in the interpretation and application of procedures for administrative qualifications. The amendments change the deadline for submission of information regarding administrative qualifications; extend the length of time that an audit report will remain valid by extending the interval from twenty-four to thirty months; and provide an option for those firms lacking an indirect cost rate audit to accept an indirect cost rate developed by the department's Audit Office. These amendments reduce the administrative qualifications burden on firms with smaller contracts or those that have a smaller participation in larger contracts.

Section 9.42(b) is amended to change the deadline for submitting the administrative qualifications information to either prior to selection or after selection, but before contract execution. Currently, the deadline to submit the information is prior to the closing date of the letter of interest, which is early in the selection process. Requiring firms to submit the administrative qualifications information early in the process reduces the potential for delays in executing a contract should a firm lacking the administrative qualification information be on a selected team. However, by requiring this information early in the process, it places a burden on firms with smaller contracts, those that have a smaller participation in larger contracts, and firms that compete for contracting opportunities, but are not successful.

Section 9.42(c) is reorganized and changes are made to correct cross references and citations. The language from current subsection (c) is added under re-lettered subsection (c) concerning indirect cost rate. The language from current subsection (c)(1), concerning an adequate accounting system, is removed and the requirement is incorporated into amended subsection (c)(1). The demonstration of the adequacy of the accounting system is not performed through a separate audit, but is performed by the auditor conducting the indirect cost rate audit. The amendment is made to clarify that it is the auditor performing the indirect cost

rate audit who will evaluate and confirm that the prime provider or subprovider has a job cost accounting system. Renumbered subsection (c)(3) is amended by extending the period during which an audit report remains valid from twenty-four months to thirty months. This change will reduce the administrative qualifications burden on providers by extending the time between required audits.

New paragraph (4) of §9.42(c) is subdivided into subparagraphs (A) and (B). The language in new subparagraph (A) is added to allow the department to contract with a prime provider or subprovider lacking an indirect cost rate audit if the firm has been in operation for less than one year or its portion of the contract is not more than $500,000 provided an indirect cost rate developed by the Audit Office is accepted. With this adoption the department has changed the word "established" to "developed" in subsection (c)(4)(A) and (B) to make it clear that the Audit Office has no management role in directing the operations of the department. The language in new subparagraph (B) is added to allow the department to contract with a firm lacking an indirect cost rate audit if the firm elects to accept an indirect cost rate developed by the Audit Office. The preference is for a firm to have an indirect cost rate audit. However, this provides an option if there are circumstances preventing a firm from obtaining an indirect cost rate audit or obtaining the audit within a reasonable time frame.

New subsection (d) is created from former subsection (c)(3) and (4) and changed. The language from current subsection (c)(3) and (4) is deleted because the existing language is not clear concerning costs to be considered during negotiations. The costs to be considered during negotiations are to be associated with salary and non-salary costs for personnel and equipment proposed for use on the solicited contract. The language in renumbered paragraphs (1) and (2) is changed to clarify that these are actual salary rates for employees proposed for work on the contract and non-salary costs proposed for the contract.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

*§9.42. Administrative Qualification.*

(a) Exception. Administrative qualification is not necessary for non-engineering firms and provider services included in Group 6 - bridge inspection, Group 12 - materials inspection and testing, Group 14 - geotechnical services, Group 15 - surveying and mapping, or Group 16 - architecture as listed on the department's web site for precertification. Provider compensation for these services is typically based on units of service rates. The Audit Office and the Design Division may agree to grant exceptions for other provider services on a case by case basis. In determining whether to grant an exception, the Audit Office and the Design Division may consider the nature of the services to be provided, the method of payment to be used, the reasonableness and feasibility of requiring an audited indirect cost rate, and any other relevant factors. Any request for an exception must be received by the Audit Office prior to the due date of the letter of interest.

(b) Time to provide information. Each prime provider and subprovider should submit the information described in this section before the final selection of the prime provider. If the information is not furnished before the selection, it must be submitted after the selection and before contract execution. The administrative qualification submittal is a separate submittal from the precertification submittal, and is submitted to the Texas Department of Transportation, Audit Office, 125 E. 11th Street, Austin, Texas 78701-2483. Administrative qualification submittals will not be received by the Design Division.

(c) Indirect cost rate audit. The department will consider the factors described in this subsection in determining administrative qualifications of prime providers or subproviders. The prime provider or subprovider must submit an indirect cost rate audit for the time period specified in paragraph (3) of this subsection performed by an independent certified public accountant, an agency of the federal government, another state transportation agency, or a local transit agency except as provided in paragraph (4) of this subsection. If the audit is performed by an independent certified public accountant, the provider or subprovider must assure that the department will be given access to the audit work papers.

(1) The audit report shall include statements that confirm the prime provider or subprovider has a job cost accounting system, the audit was performed in accordance with generally accepted government auditing standards, and the indirect cost rate was developed in accordance with the Federal Acquisition Regulations, 48 CFR Part 31.

(A) AASHTO Uniform Audit and Accounting Guide is acceptable guidance for the audit of the indirect cost rate.

(B) Department requirements that differ from the AASHTO guide are contained in the Indirect Cost Rate Guidance available through the department's website.

(2) The department may perform indirect cost rate audits of any prime provider or subprovider under contract to, or desiring to do business with, the department. These audits will be conducted consistent with the criteria outlined in this subsection.

(3) The end of the fiscal period of the audit report must be within thirty months of the date the notice was posted.

(4) The department may contract with a prime provider or allow utilization of a subprovider lacking an approved indirect cost rate audit if:

(A) the prime provider or subprovider, as applicable, has been in operation, as currently organized, for less than one fiscal year or the estimated value of its portion of the contract is not more than $500,000, and the prime provider or subprovider accepts an indirect cost rate developed by the Audit Office; or

(B) after selection the prime provider provides written certification to the Audit Office that the prime provider or subprovider, as applicable, does not have an indirect cost rate audit and will accept an indirect cost rate developed by the Audit Office.

(d) Additional information. The selected prime provider shall submit to the managing office for consideration in contract negotiations:

(1) the actual salary rates for the proposed team members; and

(2) non-salary costs, generated internally, to be billed directly.

(e) Provision of administrative qualification information. The department's Audit Office will provide administrative qualification information to the managing office when notified by the Design Division upon selection approval of a provider for the contract, for use in negotiations as identified in §9.37 of this subchapter (relating to Selection).

(f) Prohibited actions. Administrative qualification information obtained through this section will not be made available to the CST by the department's Audit Office prior to contract selection.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102492
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 20, 2011
Proposal publication date: May 13, 2011
For further information, please call: (512) 463-8683

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# CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

## SUBCHAPTER B. OTHER ENTITIES' INTERNAL ETHICS AND COMPLIANCE PROCEDURES

### 43 TAC §10.51

The Texas Department of Transportation (department) adopts amendments to §10.51, concerning Internal Ethics and Compliance Program. The amendments to §10.51 are adopted without changes to the proposed text as published in the April 15, 2011, issue of the *Texas Register* (36 TexReg 2378) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §10.51 clarify that the governing body of an entity shall be required to have periodic training in ethics and in the entity's compliance program, along with employees of the entity. Additionally, use of the term "organization" has been changed to "entity" throughout the section for consistency with the U.S. Sentencing Commission Guidelines.

The amendments add language to §10.51(b)(3) to clarify that an entity's governing board, if it has one, must be trained in ethics and compliance. The amendments delete §10.51(b)(4) because the clarification of §10.51(b)(3) causes §10.51(b)(4) to be redundant. Section 10.51(b)(5) - (9) are renumbered accordingly. Finally, the amendments replace the word "organization" with the word "entity" throughout the section.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 30, 2011.

TRD-201102493
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 20, 2011
Proposal publication date: April 15, 2011
For further information, please call: (512) 463-8683

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# TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 1 TAC §55.303(c)(1)(B)

# Texas Employer New Hire Reporting Form

Submit within 20 calendar days of new employee's first day of work to:
**ENHR Operations Center, P.O. Box 149224**
**Austin, TX 78714-9224**
**Phone: 1-800-850-6442 FAX: 1-800-732-5015**
**Online: http://employer.oag.state.tx.us**

**To ensure the highest level of accuracy, please print neatly in capital letters and avoid contact with the edges of the boxes. The following will serve as an example:**

| A | B | C |
|---|---|---|

| 1 | 2 | 3 |
|---|---|---|

## Employer Information

1. Federal Employer ID Number (FEIN):
*Please use the same FEIN that appears on quarterly wage reports.*

2. State Employer ID Number (Optional):

3. Employer Name:

4. Employer Address (Please indicate the address where the Income Withholding Orders should be sent):

5. Employer City (if US):

6. State (if US):

7. ZIP Code (if US): –

8. Province/Region (if foreign):

9. Country (if foreign):

10. Postal Code (if foreign):

11. Employer Telephone (Optional):

12. Employer FAX (Optional):

13. New Hire Contact Person (Optional):

## Employee Information

14. Social Security Number (SSN):

15. Date of Hire (MM/DD/YYYY):

16. Employee First Name:

17. Employee Middle Name:

18. Employee Last Name:

19. Employee Home Address:

20. Employee City (if US):

21. State (if US):

22. ZIP Code (if US): –

23. Province/Region (if foreign):

24. Country (if foreign):

25. Postal Code (if foreign):

26. State Where Employee Was Hired (Optional):

27. Employee DOB (MM/DD/YYYY) (Optional):

28. Employee's Salary (Dollars and Cents) (Optional):

29. Salary Frequency (Check One ONLY) (Optional):
☐ Hourly ☐ Weekly ☐ Biweekly ☐ Semi-Monthly ☐ Monthly ☐ Annually

REV 05/11

ENHR RPT FORM

**INSTRUCTIONS FOR COMPLETING THE TEXAS EMPLOYER NEW HIRE REPORTING FORM**

The purpose of the Texas New Hire Reporting Form is to allow employers to fulfill new hire reporting requirements. You may enter your employer information and photocopy a supply and then enter employee information on the copies.

**REPORTING OF NEW HIRES IS REQUIRED:**

All required items (numbers 1, 3, 4, 5, 6, 7, 14, 15, 16, 17, 18, 19, 20, 21, 22) on this form must be completed.

**Box 1: Federal Employer ID Number (FEIN).** Provide the 9-digit employer identification number that the federal government assigns to the employer. This is the same number used for federal tax reporting. Please use the same FEIN that appears on quarterly wage reports.

**Box 2: State Employer ID Number (Optional).** Identification number assigned to the employer by the Texas Workforce Commission.

**Box 3: Employer Name.** The employer name as listed on the employee's W4 form. Please do not provide more than one employer name (for example, "ABC, Inc DBA. John Doe Paint and Body Shop" is not correct).

**Box 4: Employer Address.** Please indicate the address where the Income Withholding Orders should be sent. Do not provide more than one address (for example, P.O. Box 123, 1313 Mockingbird Lane is not correct).

**Box 8: Employer Province/Region (If foreign).** Provide this information if the employer address is not in the United States.

**Box 9: Employer Country (If foreign).** Provide the two letter country abbreviation if the employer address is not in the United States.

**Box 10: Postal Code (If foreign).** Provide the postal code if the employer address is not in the United States.

**Box 13: New Hire Contact Person (Optional).** Providing the name of a contact staff person will facilitate communication between the employer and the Texas Employer New Hire Reporting Program.

**Box 15: Date of Hire.** List the date in month, day and year order. Use four digits for the year (for example, 2001). This should be the first day that services are performed for wages by an individual. If you are reporting a rehire (where a new W-4 is prepared) use the return date, not the original date of hire.

**Box 23: Employee Province/Region (If foreign).** Provide this information if the employee does not reside in the United States.

**Box 24: Employee Country (If foreign).** Provide the two letter country abbreviation if the employee address is not in the United States.

**Box 25: Postal Code (If foreign).** Provide the postal code if the employee address is not in the United States.

**Box 26: State Where Employee was Hired.** Use the abbreviation recognized by the U.S. Postal Service for the state in which the employee was hired.

**Box 27: Employee DOB (Date of Birth) (Optional).** List the date in month, day and year order. Use four digits for the year (for example, 1985).

**Box 28: Employee Salary (Optional).** Enter employee's exact wages in dollars and cents. This should correspond to the salary pay frequency indicated in Box 29.

**Box 29: Salary (Check One ONLY) (Optional).** Check the appropriate box relating to the employee's salary pay frequency. Check " Bi-weekly" if the salary is based on 26 pay periods. Check "Semi-monthly" if the salary is based on 24 pay periods. Check "Annually" if salary payment is a one-time distribution.

**SUBMISSION OF NEW HIRE REPORTS.** The Texas Employer New Hire Reporting Program offers a variety of methods that employers can use to submit new hire reports. For further information on which method may be best for you, call 1-800-850-6442. Employers are encouraged to keep photocopies or electronic records of all reports submitted. When the form is completed, send it to the Texas Employer New Hire Reporting Program using one of the following means:

- **FAX:** 1-800-732-5015
- **U.S. Mail:**

**ENHR Operations Center**
**P.O. Box 149224**
**Austin, TX 78714-9224**

- **Telephone Submissions:** 1-800-850-6442
- **Internet Submissions: http://employer.oag.state.tx.us**

**Employers must provide all of the required information within 20 calendar days of the employee's first day of work to be in compliance. State law provides a penalty of $25 for each employee an employer knowingly fails to report, and a penalty of $500 for conspiring with an employee to 1) fail to file a report or 2) submit a false or incomplete report.**

REV 05/11

ENHR RPT FORM

Figure: 25 TAC §97.63(2)(A)

**Minimum Number of Doses Required of Each Vaccine**

| Child's age at entry into child-care, early childhood programs, or pre-kindergarten | DTaP | Polio | Hep B | Hib | PCV | MMR | Varicella | Hep A |
|---|---|---|---|---|---|---|---|---|
| 0 through 2 months | None | None | None | None | None | None | None | None |
| 3 months through 4 months | 1 Dose | 1 Dose | 1 Dose | 1 Dose | 1 Dose | None | None | None |
| 5 months through 6 months | 2 Doses | 2 Doses | 2 Doses | 2 Doses | 2 Doses | None | None | None |
| 7 months through 15 months | 3 Doses | 2 Doses | 2 Doses | 2 Doses** | 3 Doses*** | None | None | None |
| 16 months through 18 months | 3 Doses | 2 Doses | 2 Doses | 3 Doses** | 4 Doses*** | 1 Dose* | 1 Dose* | None |
| 19 months through 24 months | 4 Doses | 3 Doses | 3 Doses | 3 Doses** | 4 Doses*** | 1 Dose* | 1 Dose* | None |
| 25 months through 42 months | 4 Doses | 3 Doses | 3 Doses | 3 Doses** | 4 Doses*** | 1 Dose* | 1 Dose* | 1 Dose* |
| 43 months but before Kg entry | 4 Doses | 3 Doses | 3 Doses | 3 Doses** | 4 Doses*** | 1 Dose* | 1 Dose* | 2 Doses* |

*For MMR, Varicella, and Hepatitis A vaccines, the first dose must be given on or after the first birthday.

**A complete Hib series is two doses plus a booster dose on or after 12 months of age (three doses total). If a child receives the first dose of Hib vaccine at 12-14 months of age, only one additional dose is required (two doses total). Any child who has received a single dose of Hib vaccine on or after 15 months of age is in compliance with these specified vaccine requirements.

***If the PCV series is started when a child is seven months of age or older, then all four doses are not required.

- For children seven through 11 months of age, two doses are required.

- For children 12-23 months of age: if three doses have been received prior to 12 months of age, then an additional dose is required (total of four doses) on or after 12 months of age. If one or two doses were received prior to 12 months of age, then a total of three doses are required with at least one dose on or after 12 months of age. If zero doses have been received, then two doses are required with both doses on or after 12 months of age.

- Children 24 months through 59 months meet the requirement if they have at least three doses with one dose on or after 12 months of age, or two doses with both doses on or after 12 months of age, or one dose on or after 24 months of age. Otherwise, one additional dose is required.

Figure: 43 TAC §25.24(a)

**Who Sets Speed Zones on the State Highway System, Including Turnpikes under the Department's Authority**

| If the speed zone is | Then it is established by |
|---|---|
| outside a city | commission minute order. |
| inside a city [~~and less than or equal to 60 miles per hour~~] | city ordinance or resolution or commission minute order. |
| [~~inside a city and is greater than 60 miles per hour~~] | [~~commission minute order.~~] |

Figure: 43 TAC §25.24(b)

**Who Sets Speed Zones on Turnpikes under an RMA's Authority**

| If the speed zone is | Then it is established by |
|---|---|
| outside a city | RMA order. |
| inside a city [~~and less than or equal to 60 miles per hour~~] | city ordinance or RMA order. |
| [~~inside a city and is greater than 60 miles per hour~~] | [~~RMA order.~~] |

Figure: 43 TAC §25.24(c)

**Who Sets Speed Zones on Turnpikes under an RTA's Authority**

| If the speed zone is | Then it is established by |
|---|---|
| outside a city | RTA order. |
| inside a city [~~and less than or equal to 60 miles per hour~~] | city ordinance or RTA order. |
| [~~inside a city and is greater than 60 miles per hour~~] | [~~RTA order.~~] |

# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

## Department of Assistive and Rehabilitative Services

### Notice of Public Hearing for DARS Maximum Affordable Payment Schedule (MAPS) to be Effective September 1, 2011

The Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing from 2:00 p.m. to 4:00 p.m. on Thursday, August 4, 2011, in Conference Room 3540 of the Brown-Heatly Building at 4900 North Lamar Blvd., Austin, Texas 78751, to receive public comments on the proposed FY 2011-2012 Maximum Affordable Payment Schedule (MAPS) rates used for the purchase of medical and medical-related services. The proposed implementation date for the new MAPS rates is September 1, 2011.

The schedule of proposed rates may be viewed or copies may be obtained by calling Stuart McPhail with DARS at (512) 424-4144 or visiting DARS at the Brown-Heatly Building at the above-mentioned address.

Written comments on the proposed rates may be submitted to Stuart McPhail, Department of Assistive and Rehabilitative Services, 4900 North Lamar Blvd., Austin, Texas 78751.

TRD-201102497
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: July 1, 2011

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## Office of the Attorney General

### Request for Applications for the Sexual Assault Prevention and Crisis Services Program

The Crime Victim Services Division (CVSD) of the Office of the Attorney General (OAG) is soliciting applications from qualified statewide nonprofit organizations to utilize funds to provide: (1) services to prevent sexual violence and improve services to sexual assault victims; (2) outreach and training programs; and (3) technical assistance to support youth and rape crisis centers working to prevent sexual violence.

**Applicable Funding Source:** The source of state funds is a biennial appropriation by the Texas Legislature. All funding is contingent upon the appropriation of funds by the Texas Legislature. The OAG makes no commitment that an application, once submitted, or a grant, once funded, will receive subsequent funding.

**Eligibility Requirements:** To be eligible, an applicant must (1) be a statewide nonprofit organization exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code of 1986; and (2) have a primary purpose of ending sexual violence in this state. A statewide program is an entity that actively offers or provides services in six or more Council of Government "COG" regions.

The OAG will initially screen each application for eligibility. Applications will be deemed ineligible if the application is submitted by an ineligible applicant; the application is not filed in the manner and form required by the RFA or the Application Kit; the application is filed after the deadline established in the RFA or the Application Kit; or the application does not meet other requirements as stated in the RFA or the Application Kit.

**How to Obtain Application Kit:** The OAG will post the Application Kit on the OAG's official agency website at http://www.oag.state.tx.us/victims/grants.shtml. Updates and other helpful reminders about the application process will also be posted at this location. Potential applicants are encouraged to refer to this site regularly.

**Deadlines and Filing Instructions for the Grant Application:** Refer to the Application Kit for the complete application requirements and instructions.

*Deadline:* The applicant must submit its application to the OAG and the OAG must receive the submitted application and all required attachments by 5:00 p.m. CST July 27, 2011 to be considered timely filed.

*Filing Instructions:* To be considered filed, the Applicant must submit the application by email to CVSGrantsApplications@oag.state.tx.us.

The OAG will not consider an Application if it is not filed by the due date, 5:00 p.m. CST July 27, 2011.

**Minimum and Maximum Amounts of Funding Available:** For the initial grant contract period (term) the minimum amount of funding statewide programs may apply for is $20,000 and the maximum amount is $100,000 per fiscal year.

The amount of the award is determined solely by the OAG. The OAG may award a grant at an amount above or below the established funding level and is not obligated to fund a grant at the amount requested. Based on available funding, the grant contract may be amended for an additional term with an additional amount of funding at the sole discretion of the OAG.

**Start Date and Length of Grant Contract Period:** The term of this grant contract is up to two years from September 1, 2011 through August 31, 2013, subject to and contingent on funding and approval by the OAG. If the grant contract period extends for more than one state fiscal year, the grantee may be required to submit additional documentation relating to the second fiscal year of the grant contract period, including an updated budget. The OAG may base its decision for the second fiscal year funding amounts on the grantee's first year performance, including but not limited to: the timeliness and thoroughness of reporting, effective and efficient use of grant funds and the success of the project in meeting its goals.

**No Match Requirements:** There are no match requirements for this funding opportunity.

**Volunteer Requirements:** A volunteer component is required. Specific requirements for the volunteer component will be stated in the Application Kit.

**Award Criteria:** The OAG will make funding decisions that support the efficient and effective use of public funds. Scoring components may include, but are not limited to, information provided by the applicant on the organization's capacity, infrastructure, current knowledge, efforts,

expertise and experience, and on the proposed project activities and budget.

**Prohibitions on Use of Grant Funds:** OAG grant funds may not be used to support or pay the costs of overtime, dues, or lobbying; any portion of the salary or any other compensation for an elected government official; the purchase of food and beverages except as allowed under Texas State Travel Guidelines; the purchase or lease of vehicles; the purchase of promotional items or recreational activities; out of state travel or costs of travel that are unrelated to the direct delivery of services that support the OAG funded program; the costs for consultants or vendors who participate directly in writing a grant application; or for any unallowable costs set forth in applicable state or federal law, rules, regulations, guidelines, policies, procedures or cost principles. Grant funds may not be used to purchase any other products or services the OAG identifies as inappropriate or unallowable within this RFA or the Application Kit.

**OAG Contact Person:** If additional information is needed, contact Jennifer McShane Ferguson at CVSGrantsApplications@oag.state.tx.us or (512) 936-1278.

*For information regarding this publication, contact Zindia Thomas, Agency Liaison, at (512) 936-9901.*

TRD-201102548
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: July 6, 2011

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## Cancer Prevention and Research Institute of Texas

### Request for Applications C-12-COMP-2 Company Commercialization Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Commercialization Award is to finance the development of innovative products, services, and infrastructure with significant potential impact on patient care. These investments will provide companies or limited partnerships located and headquartered in Texas, or those that are willing to relocate to Texas, with the opportunity to further the development of new products for the diagnosis, treatment, or prevention of cancer; to establish infrastructure that is critical to the development of a robust industry; or to fill a treatment or research gap. This award is intended to support companies that will be staffed with a majority of Texas-based employees, including C-level executives. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the award, company applicants must have already received at least one round of professional institutional investment and must have or must commit to headquartering and registration in Texas; the majority of staff residing in or relocated to Texas; and use of Texas-based subcontractors and suppliers, unless adequate justification is provided for the use of out-of-State entities. No maximum is set on the amount of funding that can be requested. Funding will be tranched and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on July 28, 2011 through 3:00 p.m. Central Time on August 25, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201102535
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: July 6, 2011

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### Request for Applications C-12-FORM-2 Company Formation Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from Texas-based companies for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Formation Award is to support the formation and establishment of new start-up companies in Texas that will develop products to significantly impact cancer care. These companies must be Texas-based or be willing to relocate to and remain in Texas for a specified period upon funding. Eligible products or services include, but are not limited to, therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the award, company applicants must be early-stage start-up companies with no previous rounds of professional institutional investment. Successful applicants must commit to headquartering and registration in Texas; the majority of staff residing in Texas; and use of Texas-based subcontractors and suppliers, unless adequate justification is provided for the use of out-of-State entities. This is a 3-year funding program with an opportunity for renewal after the term expires. No maximum is set on the amount of funding that can be requested. Funding will be tranched and will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on July 28, 2011 through 3:00 p.m. Central Time on August 25, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201102534

William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: July 6, 2011

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### Request for Applications C-12-RELO-2 Company Relocation Award

The Cancer Prevention and Research Institute of Texas (CPRIT) seeks applications from companies or limited partnerships that are willing to relocate to Texas for innovative products addressing critically important needs related to diagnosis, prevention, and/or treatment of cancer and the product development infrastructure needed to support these efforts.

The goal of the Company Relocation Award is to attract industry partners in the field of cancer care to advance economic development and cancer care efforts in the State by recruiting to Texas companies with proven management teams who are focused on exceptional product opportunities to improve cancer care. Eligible products or services include, but are not limited to, therapeutics (e.g., small molecules and biologics), diagnostics, devices, and potential breakthrough technologies, including software and research discovery techniques. Eligible stages of development include translational research, proof-of-concept studies, preclinical studies, and Phase I or Phase II clinical trials. By exception, Phase III clinical trials and later stage commercialization projects will be considered where circumstances warrant CPRIT investment.

To be eligible for the award, company applicants must presently be domiciled outside Texas, and the majority of the staff, including C-level executives, must be willing to relocate to and remain in Texas for a specified period upon funding. This is a 3-year funding program with an opportunity for renewal after the term expires. Financial support will be awarded based upon the breadth and nature of the development program proposed. While requested funds must be well justified, no maximum is set on the amount that may be requested. Funding will be tied to the achievement of contract-specified milestones. Funds may be used for salary and fringe benefits, research supplies, equipment, clinical trial expenses, intellectual property protection, external consultants and service providers, and other appropriate development costs, subject to certain limitations set forth by Texas state law.

A detailed Request for Applications (RFA) is available online at www.cprit.state.tx.us. Applications will be accepted beginning at 7:00 a.m. Central Time on July 28, 2011 through 3:00 p.m. Central Time on August 25, 2011, and must be submitted via the CPRIT Application Receipt System (www.CPRITGrants.org). CPRIT will not accept applications that are not submitted via the CPRIT Application Receipt System.

TRD-201102533
William "Bill" Gimson
Executive Director
Cancer Prevention and Research Institute of Texas
Filed: July 6, 2011

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## Comptroller of Public Accounts

### Notice of Contract Amendments

The Comptroller of Public Accounts (Comptroller) announces Amendment No. 2 of the contract awards described below.

The Comptroller's Request for Qualifications was published in the May 8, 2009, issue of the *Texas Register* (34 TexReg 2823) (RFQ #192h). The Notice of Awards was published in the September 11, 2009, issue of the *Texas Register* (34 TexReg 6358).

The contractors provide tax examination services to the Comptroller as authorized by Chapter 111, Subchapter A, §111.0045 of the Texas Government Code. Each contract was amended in 2010 to extend the term through August 31, 2011 and Notice of Contract Amendment was published in the September 10, 2010, issue of the *Texas Register* (35 TexReg 8425).

The following persons/firms were awarded amendments to their contracts:

Cindy Alvarez, 3820 Ashbury Lane, Bedford, Texas 76021, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

Sam W. Armstrong, P.C., 931 Kentbury Court, Katy, Texas 77450, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

Cindy H. Coats, CPA, 212 W. Legend Oaks Drive, Georgetown, Texas 78628-5003, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

Texas Tax Consulting Group, L.C., 6310 Hanley Dr., Corpus Christi, Texas 78412, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

Nedzra J. Ward, 11403 Kay Lane, Pearland, Texas 77584-7270, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

Gordon Wheeler, 8410 Neff Street, Houston, Texas 77036, is extended by Amendment No. 2. The extended term of the contract continues through August 31, 2012, with no options to extend.

The total amount of each contract is based on the size of contract tax examination packages awarded by the Comptroller's Project Manager during the term of each contract. The original term of the contracts was September 1, 2009 through August 31, 2010. Term for Amendment No. 1 was September 1, 2010 through August 31, 2011. Amendment No. 2, that is the subject of this notice, extends the term of the contract through August 31, 2012.

TRD-201102551
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 6, 2011

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## Court of Criminal Appeals

### IN THE COURT OF CRIMINAL APPEALS OF TEXAS

*To ensure that all appropriate state and federal courts, officials, and parties shall have an adequate opportunity to review and resolve legal and factual issues concerning an impending execution, the Court of Criminal Appeals has adopted Miscellaneous Rule 11-003, effective immediately. This rule is modeled upon an analogous rule adopted by the Fifth Circuit Court of Appeals.*

SIGNED AND ENTERED this 30th day of June, 2011.

Sharon Keller, Presiding Judge

_____

Lawrence E. Meyers, Judge

_____

Tom Price, Judge

_____

Paul Womack, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Cathy Cochran, Judge

_____

Elsa Alcala, Judge

_____

MISCELLANEOUS RULE 11-003

**Procedures in Death Penalty Cases Involving Requests for Stay of Execution and Related Filings in Texas State Trial Courts and the Court of Criminal Appeals**

1. *Time Requirements for Habeas Petitions or Other Motions.* Inmates sentenced to death who seek a stay of execution or who wish to file a subsequent writ application or other motion seeking any affirmative relief from, or relating to, a death sentence must exercise reasonable diligence in timely filing such requests. A motion for stay of execution, or any other pleading relating to a death sentence, must be filed in the proper court at least seven days before the date of the scheduled execution date (exclusive of the scheduled execution date). A pleading shall be deemed untimely if it is filed in the proper court fewer than seven days before the scheduled execution date. For example, a request for a stay of execution filed at 8:00 a.m. on a Wednesday morning when the execution is scheduled for the following Wednesday at 6:00 p.m. is untimely.

2. *Special Requirements for Untimely Petitions or Other Motions.* Counsel who seek to file an untimely motion for a stay of execution or who wish to file any other untimely pleading requesting affirmative relief in an impending execution case, must attach to the proposed filing a detailed explanation stating under oath, subject to the penalties of perjury, the reason for the delay and why counsel found it physically, legally, or factually impossible to file a timely request, motion, or other pleading. Counsel is required to show good cause for the untimely filing.

3. *Sanctions.* Counsel who fails to attach a sworn detailed explanation to an untimely filing or who fails to adequately justify the necessity for an untimely filing shall be sanctioned. Such sanctions include, but are not limited to (1) referral to the Chief Disciplinary Counsel of the State Bar of Texas; (2) contempt of court; (3) removal from the list of Tex. Code Crim. Proc. Art. 11.071 list of attorneys; (4) restitution of costs incurred by the opposing party; and (5) any other sanction allowed by law (see, e.g., Tex. R. Civ. P. 215.2).

TRD-201102498

Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: July 1, 2011

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## East Texas Council of Governments

### Public Notice

East Texas Council of Governments (ETCOG) is accepting proposals from experienced individuals, organizations or teams which will provide the service of acting as the Strategic Facilitator (Facilitator) to assist selected ETCOG staff with the planning and delivery of at least three (3) one (1) day-long sessions with county subject matter experts who are thoroughly familiar with the Mental Health/Mental Retardation commitment process and procedures (MH/MR Team).

Proposal packets are available in an electronic format upon request and may be obtained by going to www.etcog.org. The proposal packet may be obtained by submitting a request to Deborah Butts by fax at (903) 983-1440 or by email at deborah.butts@etcog.org. Deadline to submit a proposal is 5:00 p.m. (CST) on July 25, 2011. Proposals will be opened and read at the ETCOG office after this date and time. The ETCOG reserves the right to reject any and/or all proposals and to waive any technicalities in the best interest of these entities. ETCOG is an equal opportunity employer. Auxiliary Aids and Services are available upon request.

TRD-201102524
Lindsay Vanderbilt
Communications Manager
East Texas Council of Governments
Filed: July 5, 2011

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## Texas Commission on Environmental Quality

### Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 15, 2011. TWC §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on August 15, 2011.

Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC §7.075 provides that comments on the AOs shall be submitted to the commission in **writing.**

(1) COMPANY: Arnold C. Mendez, Jr. dba Premier Landscaping and Irrigation; DOCKET NUMBER: 2011-0452-LII-E; IDENTIFIER: RN104457601; LOCATION: Conroe, Montgomery County; TYPE OF FACILITY: irrigation and landscaping service; RULE VIOLATED: 30 TAC §344.35(d)(12), by failing to provide a copy of the design plan and to complete the installation, including the final walk through; and 30 TAC §344.71(b), by failing to include the following statement in all written estimates, proposals, bids, and invoices relating to the installation or repair of an irrigation system: "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality"; PENALTY: $575; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Borger Energy Associates, L.P.; DOCKET NUMBER: 2011-0741-AIR-E; IDENTIFIER: RN100217298; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: electric power generation plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.145(2)(A), Federal Operating Permit Number O1753, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to report all instances of deviations; PENALTY: $1,060; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: City of Lefors; DOCKET NUMBER: 2011-0493-MWD-E; IDENTIFIER: RN102184546; LOCATION: Gray County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a), 30 TAC §305.125(17) and §319.1, and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010411001, Monitoring and Reporting Requirements Number 1, by failing to timely submit effluent monitoring results at the intervals specified in the permit; TWC §26.121(a), 30 TAC §305.125(17) and TPDES Permit Number WQ0010411001 Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010; and TWC §26.121(a), 30 TAC §305.125(1) and TPDES Permit Number WQ001411001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limits; PENALTY: $3,550; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4) COMPANY: City of Pampa; DOCKET NUMBER: 2011-0316-MWD-E; IDENTIFIER: RN101608974; LOCATION: Gray County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010358002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $9,500; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: City of Roaring Springs; DOCKET NUMBER: 2011-0620-PWS-E; IDENTIFIER: RN101200095; LOCATION: Motley County; TYPE OF FACILITY: municipal public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and Texas Health and Safety Code, §290.0315(c), by exceeding the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on a running annual average, during the third and fourth quarters of 2010; PENALTY: $275; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 403-4012; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(6) COMPANY: City of Tyler ; DOCKET NUMBER: 2010-1697-MWD-E; IDENTIFIER: RN101611150 and RN102916459; LOCATION: Tyler, Smith County; TYPE OF FACILITY: wastewater treatment plants; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010653001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; and TWC §26.121(a)(1), 30 TAC §305.125(1), and TPDES Permit Number WQ0010653001, Permit Conditions Number 2.g., by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; PENALTY: $41,400; Supplemental Environmental Project offset amount of $41,400 applied to Repair of Diversion Conduit Outlet Pipe on Whitehouse Dam; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: Clean Harbors Deer Park, LLC; DOCKET NUMBER: 2011-0253-IWD-E; IDENTIFIER: RN102184173; LOCATION: La Porte, Harris County; TYPE OF FACILITY: industrial and hazardous waste treatment, storage and disposal; RULE VIOLATED: TWC§26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001429000, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with the permitted effluent limitations; PENALTY: $23,900; Supplemental Environmental Project offset amount of $9,560 applied to Galveston Bay Foundation, Marsh Mania; ENFORCEMENT COORDINATOR: JR Cao, (512) 239-2543; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Cracker Barrel, Incorporated; DOCKET NUMBER: 2011-0518-PWS-E; IDENTIFIER: RN102883410; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: convenience store and restaurant with a public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of January, April, May and July 2010, and by failing to provide public notification of the failure to collect routine samples for the months of January, April, May and July 2010; PENALTY: $949; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: Dustin Herrin; DOCKET NUMBER: 2011-1022-WOC-E; IDENTIFIER: RN106130826; LOCATION: Newton, Newton County; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: E. J. Lewis, Sr. dba Lewis' Acres Service Incorporated; DOCKET NUMBER: 2011-0511-IHW-E; IDENTIFIER: RN106049885; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: management of industrial solid waste; RULE VIOLATED: 30 TAC §335.4, by failing to prevent the unauthorized discharge of industrial solid waste; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Flint Hills Resources Corpus Christi, LLC; DOCKET NUMBER: 2011-0529-AIR-E; IDENTIFIER: RN100235266; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 116.715(a), and 122.143(4), Texas Health and Safety Code, §382.085(b), Flexible Permit Numbers 8803A and PSDTX413M9, Special Condition Number 1, and Federal Operating Permit Number O1272, Special Terms and Conditions Number 30A and General Terms and Conditions, by failing to prevent unauthorized emissions; PENALTY: $6,650; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3553; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Invista S.a.r.l.; DOCKET NUMBER: 2010-2078-AIR-E; IDENTIFIER: RN104392626; LOCATION: Orange, Orange County; TYPE OF FACILITY: nylon production plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit O-01996, General Terms and Conditions, and Special Terms and Conditions Number 13 and New Source Review Permit Number 1303, Special Condition Number 1, by failing to comply with the volatile organic compound maximum allowable emission rate; PENALTY: $14,850; Supplemental Environmental Project offset amount of $5,940 applied to Texas Association of Resource Conservation and Development Areas, Incorporated, Abandoned Tire Clean-up; ENFORCEMENT COORDINATOR: Audra Benoit, (409) 899-8799; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(13) COMPANY: J and N Development, Incorporated; DOCKET NUMBER: 2011-0209-EAQ-E; IDENTIFIER: RN105031363; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: auto service; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a modification to a contributing zone plan prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone; PENALTY: $3,060; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(14) COMPANY: Llano Ready Mix, Incorporated; DOCKET NUMBER: 2011-0531-IWD-E; IDENTIFIER: RN105830434; LOCATION: Llano, Llano County; TYPE OF FACILITY: ready-mix concrete facility; RULE VIOLATED: 30 TAC §305.125(17) and §319.7(d) and Texas Pollutant Discharge Elimination System General Permit Number TXG110993, Part IV Standard Permit Conditions 7(f), by failing to timely submit discharge monitoring reports for the monitoring periods ending January 31, 2010 - December 31, 2010; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(15) COMPANY: Mirando City Water Supply Corporation; DOCKET NUMBER: 2011-0666-MWD-E; IDENTIFIER: RN101455624; LOCATION: Webb County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §§305.125(1), 305.125(17) and 319.7(d) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014207001, Monitoring and Reporting Requirements Number 1, by failing to timely submit the discharge monitoring reports for the monitoring periods ending March 31, 2010 - December 31, 2010, by the 20th day of the following month; and 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0014207001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2010 by September 1, 2010; PENALTY: $1,155; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(16) COMPANY: Oxy USA WTP LP; DOCKET NUMBER: 2011-0449-AIR-E; IDENTIFIER: RN100216415; LOCATION: Kermit, Winkler County; TYPE OF FACILITY: water pumping; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Federal Operating Permit (FOP) Number O3117, General Operating Permit (GOP) Number 514, Site-wide Requirements (SWR) (b)(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit a Permit Compliance Certification within 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.145(2)(C), FOP Number O3117, GOP Number 514, SWR (b)(2) and THSC §382.085(b), by failing to submit a semiannual deviation report within 30 days after the end of the reporting period; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 899-8785; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(17) COMPANY: Pallet Companies, Incorporated dba IFCO Systems North America; DOCKET NUMBER: 2011-0488-PWS-E; IDENTIFIER: RN103134201; LOCATION: Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis and by failing to provide public notification of the failure to sample; 30 TAC §21.3(b)(6)(C) and TWC §26.0291 and §5.702, by failing to pay all annual and late General Permits Stormwater fees; PENALTY: $2,558; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Texas A&M University at Galveston; DOCKET NUMBER: 2011-0378-MWD-E; IDENTIFIER: RN102339561; LOCATION: Galveston, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0011085001, Effluent Limitations and Monitoring Requirements Number 4, by failing to prevent the unauthorized discharge of municipal waste into or adjacent to water in the state; PENALTY: $1,140; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2010-0924-AIR-E; IDENTIFIER: RN100214386 and RN100238385; LOCATION: Corpus Christi, Nueces County and Texas City, Galveston County; TYPE OF FACILITY: petroleum refineries; RULE VIOLATED: 30 TAC §116.715(a) and (c)(7), Texas Health and Safety Code (THSC), §382.085(b), and Flexible Permit Numbers 38754 and PSDTX324M13, Special Condition (SC) Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(a)(1), (b) and (c) and THSC §382.085(b), by failing to submit the initial notification and final report for an emissions event initially reported as two incidents (Incident Numbers 118109 and 11485) in a timely manner; 30 TAC §116.715(a) and (c)(7), and THSC §382.085(b), and Flexible Permit Numbers 38754 and PSDTX324M13, SC Number 1, by failing to prevent unauthorized emissions; 30 TAC §116.715(a) and §101.20(3), THSC §382.085(b), and Flexible Permit Numbers 39142 and PSDTX822M2, SC Number 1, by failing to prevent unauthorized emissions; 30 TAC §101.201(b)(1)(G) and THSC §382.085(b), by failing to include the compound descriptive types in the final report; and 30 TAC §116.715(a) and §101.20(3), THSC §382.085(b), and Flexible Permit Numbers 39142 and PSDTX822M2, SC Number 1, by failing to prevent unauthorized emissions; PENALTY: $591,798; Supplemental Environmental Project offset amount of $295,899 applied to Texas Parent Teacher Association (PTA), Texas PTA Clean School Buses; ENFORCEMENT COORDINATOR: Trina Grieco,

(210) 403-4006; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20) COMPANY: Veneerstone, LLC; DOCKET NUMBER: 2011-0623-AIR-E; IDENTIFIER: RN106051824; LOCATION: McKinney, Collin County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a concrete batch plant; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: Zapata County; DOCKET NUMBER: 2010-1950-MWD-E; IDENTIFIER: RN102078391; LOCATION: Zapata, Zapata County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0010462001, Effluent Limitations and Monitoring Requirements Numbers 1 and 6, by failing to comply with permitted effluent limits; 30 TAC §305.125(1) and (17) and TPDES Permit Number WQ0010462001, Sludge Provisions, by failing to timely submit the annual sludge report for the monitoring period ending July 31, 2009 by September 1, 2009; 30 TAC §305.125(1) and (5) and TPDES Permit Number WQ0010462001, Operational Requirements Number 4, by failing to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures; 30 TAC §319.7(a), by failing to properly complete chain-of-custody forms; 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010462001, Monitoring and Reporting Requirements Number 7.a., by failing to report unauthorized discharges to the TCEQ within 24 hours (either orally or by fax) and within five days (written report) of the occurrence; TWC §26.121(a)(1), 30 TAC §305.125(1) and (5), and TPDES Permit Number WQ0010462001, Permit Conditions Number 2.d., by failing to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, resulting in a discharge of partially treated wastewater to water in the state; 30 TAC §305.125(1) and §317.7(e)(5), and TPDES Permit Number WQ0010462001, Operational Requirements Number 1, by failing to properly operate and maintain the collection system; TWC §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0010462001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; TWC §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0010462001, Permit Conditions Number 2.g., by failing to prevent an unauthorized discharge of wastewater into or adjacent to water in the state; and 30 TAC §305.125(1) and (9)(A) and TPDES Permit Number WQ0010462001, Monitoring and Reporting Requirements Number 7.a., by failing to report unauthorized discharges to the TCEQ within 24 hours (either orally or by fax) and within five days (written report) of the occurrence; PENALTY: $74,860; Supplemental Environmental Project offset amount of $74,860 applied to Pedernales Road Water Line Project; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

TRD-201102526
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Enforcement Orders

An agreed order was entered regarding EBAA Iron, Inc., Docket No. 2004-0505-WQ-E on June 23, 2011 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Odessa Corporation, dba Signature Mart 2, Docket No. 2008-1641-PST-E on June 27, 2011 assessing $31,475 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Albemarle Corporation, Docket No. 2009-1515-AIR-E on June 28, 2011 assessing $23,635 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of De Kalb, Docket No. 2010-0348-MWD-E on June 23, 2011 assessing $20,960 in administrative penalties with $20,960 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Omaha, Docket No. 2010-0534-MWD-E on June 23, 2011 assessing $9,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding Waylon Collins, Docket No. 2010-0597-PST-E on June 23, 2011 assessing $2,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie Frazee, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding 5 Star Diamond, LLC dba Diamond Mart, Docket No. 2010-0886-PST-E on June 23, 2011 assessing $11,023 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding EnviroGreen Recovery Solutions LLC, Docket No. 2010-1224-MLM-E on June 23, 2011 assessing $10,468 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stephanie J. Frazee, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DRC BUSINESS INC. dba Kountry Kwik, Docket No. 2010-1227-PWS-E on June 23, 2011 assessing $3,927 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bao Vu Nguyen dba Carousel Mobile Home Park, Docket No. 2010-1236-MLM-E on June 23, 2011 assessing $322 in administrative penalties with $64 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Bosque Basin Water Supply Corporation, Docket No. 2010-1245-PWS-E on June 23, 2011 assessing $14,355 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Robert Choate dba Pop's Tire Shop, Docket No. 2010-1268-MSW-E on June 23, 2011 assessing $31,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tammy L. Mitchell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Webb County, Docket No. 2010-1283-MLM-E on June 23, 2011 assessing $1,447 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAHIL VENTURES, INC. dba Paradise Food Mart, Docket No. 2010-1299-PST-E on June 23, 2011 assessing $5,353 in administrative penalties with $1,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Chris W Duncan dba Lakeside Water Company, Docket No. 2010-1371-PWS-E on June 23, 2011 assessing $3,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Gregory S. Shindler, Docket No. 2010-1376-PST-E on June 23, 2011 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sharesa Y. Alexander, Staff Attorney at (512) 239-3503, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Geosource, Inc., Docket No. 2010-1394-EAQ-E on June 23, 2011 assessing $9,375 in administrative penalties with $1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Jordan Jones, Enforcement Coordinator at (512) 239-2569, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Huntsman Petrochemical LLC, Docket No. 2010-1422-AIR-E on June 23, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding JASPER CINDI, INC. dba Bullfrogs Bar & Grill, Docket No. 2010-1498-PWS-E on June 23, 2011 assessing $850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Terry Beverlin, Docket No. 2010-1562-MLM-E on June 23, 2011 assessing $2,134 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Peipey Tang, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 366, Docket No. 2010-1571-MWD-E on June 23, 2011 assessing $2,980 in administrative penalties with $596 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Connie Rogers dba Alamo Pumping BLU Site, Docket No. 2010-1591-SLG-E on June 23, 2011 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting James Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Cecil D. Hutcheson, Docket No. 2010-1596-WOC-E on June 23, 2011 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Marshall Coover, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Structures of America, Inc., Docket No. 2010-1598-AIR-E on June 23, 2011 assessing $66,048 in administrative penalties with $13,209 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Control Specialists LLC, Docket No. 2010-1632-IWD-E on June 23, 2011 assessing $3,550 in administrative penalties with $710 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Patrick Y. Shin dba Cedar Hill Cleaners, Docket No. 2010-1646-DCL-E on June 23, 2011 assessing $7,374 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Patrick Y. Shin dba Douglas Cleaners, Docket No. 2010-1647-DCL-E on June 23, 2011 assessing $7,281 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sonnyreena Corporation dba RK Mart, Docket No. 2010-1648-PST-E on June 23, 2011 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of San Augustine, Docket No. 2010-1714-MWD-E on June 23, 2011 assessing $37,975 in administrative penalties with $7,595 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ROBBIE D. WOOD, INC., Docket No. 2010-1720-IHW-E on June 23, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AADARSH BUSINESS INC. dba Red Rock Grocery, Docket No. 2010-1737-PST-E on June 23, 2011 assessing $1,754 in administrative penalties with $350 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Rim Investors 2007-5, L.P., Docket No. 2010-1779-EAQ-E on June 23, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding S.A.A.A. ENTERPRISES, INC. dba West Airport Food Mart, Docket No. 2010-1805-PST-E on June 23, 2011 assessing $7,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Commons Water Supply Inc, Docket No. 2010-1833-UTL-E on June 23, 2011 assessing $436 in administrative penalties with $87 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TRINITY OAKS S.A., Ltd., Docket No. 2010-1839-EAQ-E on June 23, 2011 assessing $17,500 in administrative penalties with $3,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vopak Terminal Galena Park, Inc., Docket No. 2010-1843-IWD-E on June 23, 2011 assessing $17,640 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeremy Escobar, Enforcement Coordinator at (361) 825-3422, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMINA CORPORATION dba Kwik Stop 2, Docket No. 2010-1874-PST-E on June 23, 2011 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Normangee, Docket No. 2010-1879-PWS-E on June 23, 2011 assessing $1,624 in administrative penalties with $324 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pure-Flow, Inc. dba Andrews-Butane Route Disposal, Docket No. 2010-1880-AIR-E on June 23, 2011 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2010-1881-AIR-E on June 23, 2011 assessing $23,250 in administrative penalties with $4,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WOODMARK UTILITIES, INC., Docket No. 2010-1884-MWD-E on June 23, 2011 assessing $8,600 in administrative penalties with $1,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chapel Hill Independent School District, Docket No. 2010-1893-MWD-E on June 23, 2011 assessing $17,472 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Leonard, Docket No. 2010-1900-MWD-E on June 23, 2011 assessing $2,470 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Holly Energy Partners - Operating, L.P. dba Holly Energy Orla Terminal, Docket No. 2010-1906-IHW-E on June 23, 2011 assessing $30,350 in administrative penalties with $6,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tenet Hospitals Limited dba Doctors Hospital, Docket No. 2010-1908-PST-E on June 23, 2011 assessing $11,244 in administrative penalties with $2,248 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Real & Retail Unlimited Inc. dba Argyle Johnny Joe's, Docket No. 2010-1914-PST-E on June 23, 2011 assessing $4,189 in administrative penalties with $837 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Ray Carpenter dba Carpenter Dirt Work, Docket No. 2010-1928-MSW-E on June 23, 2011 assessing $12,008 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Karen Reeves, Docket No. 2010-1931-PWS-E on June 23, 2011 assessing $5,063 in administrative penalties with $1,012 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hartmut F. Mueller dba Hofbrau Park, Docket No. 2010-1933-PWS-E on June 23, 2011 assessing $1,379 in administrative penalties with $275 deferred.

Information concerning any aspect of this order may be obtained by contacting Amanda Henry, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tall Timbers Utility Company, Inc., Docket No. 2010-1942-MWD-E on June 23, 2011 assessing $7,400 in administrative penalties with $1,480 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TIKI FOOD MART, L.L.C., Docket No. 2010-1949-PST-E on June 23, 2011 assessing $3,578 in administrative penalties with $715 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cedar Park, Docket No. 2010-1951-MWD-E on June 23, 2011 assessing $12,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lanae Foard, Enforcement Coordinator at (512) 239-2554, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aqua Texas, Inc., Docket No. 2010-1957-MLM-E on June 23, 2011 assessing $2,987 in administrative penalties with $597 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen Thompson, Enforcement Coordinator at (512) 239-2558, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAN ANGELO BY-PRODUCTS, INC., Docket No. 2010-1966-IWD-E on June 23, 2011 assessing $11,521 in administrative penalties with $2,304 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City Market Sun City, Inc dba City Market, Docket No. 2010-1970-PST-E on June 23, 2011 assessing $1,575 in administrative penalties with $315 deferred.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2010-2001-AIR-E on June 23, 2011 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (713) 422-8970, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding P. U. Corporation dba Gainesville Fuel Stop, Docket No. 2010-2003-PST-E on June 23, 2011 assessing $5,942 in administrative penalties with $1,188 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Supertrack Arlington, Inc. dba Supertrack, Docket No. 2010-2010-PST-E on June 23, 2011 assessing $6,904 in administrative penalties with $1,380 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Regency Field Services LLC, Docket No. 2010-2014-AIR-E on June 23, 2011 assessing $9,743 in administrative penalties with $1,948 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tristream East Texas, LLC, Docket No. 2010-2015-AIR-E on June 23, 2011 assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cleveland, Docket No. 2010-2036-MWD-E on June 23, 2011 assessing $7,600 in administrative penalties with $1,520 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilot Travel Centers LLC, Docket No. 2010-2038-IWD-E on June 23, 2011 assessing $8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Lubrizol Corporation, Docket No. 2010-2043-AIR-E on June 23, 2011 assessing $17,450 in administrative penalties with $3,490 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Boles Independent School District, Docket No. 2010-2048-MWD-E on June 23, 2011 assessing $9,200 in administrative penalties with $1,840 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Tenaha, Docket No. 2010-2049-MWD-E on June 23, 2011 assessing $9,806 in administrative penalties with $1,961 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Benjamin Sanjuan dba Golden Carriage Mobile Home Park, Docket No. 2010-2050-UTL-E on June 23, 2011 assessing $535 in administrative penalties with $107 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (361) 825-3425, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding National Petro Inc dba New K & T Quick Stop, Docket No. 2010-2053-PST-E on June 23, 2011 assessing $1,625 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Marlow, Enforcement Coordinator at (409) 899-8785, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HUDSON BEND GROCERY INC., Docket No. 2010-2067-PST-E on June 23, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Bridget Lee, Enforcement Coordinator at (512) 239-2565, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Bay General Hospital, Inc., Docket No. 2010-2079-PST-E on June 23, 2011 assessing $2,600 in administrative penalties with $520 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Hagood, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RSN ENTERPRISES, INC. dba Ella Shell, Docket No. 2011-0013-PST-E on June 23, 2011 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Mike Pace, Enforcement Coordinator at (817) 588-5933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enterprise Products Operating LLC, Docket No. 2011-0032-AIR-E on June 23, 2011 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FORT WORTH LUCKY ONE, INC., Docket No. 2011-0033-PST-E on June 23, 2011 assessing $2,679 in administrative penalties with $535 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R2R Recycling, L.L.C., Docket No. 2011-0034-MSW-E on June 23, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Tate Barrett, Enforcement Coordinator at (713) 422-8968, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOSKINS ELECTRIC CO., Docket No. 2011-0035-PST-E on June 23, 2011 assessing $3,354 in administrative penalties with $670 deferred.

Information concerning any aspect of this order may be obtained by contacting Cara Windle, Enforcement Coordinator at (512) 239-2581, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WTG FUELS, INC. dba Wallisville Gascard 260303, Docket No. 2011-0052-PST-E on June 23, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, Enforcement Coordinator at (713) 767-3682, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CW SCOA West, L.P. and Harris County Municipal Utility District No. 500, Docket No. 2011-0057-MWD-E on June 23, 2011 assessing $2,815 in administrative penalties with $563 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding West Harris County Municipal Utility District No. 10, Docket No. 2011-0060-MWD-E on June 23, 2011 assessing $2,300 in administrative penalties with $460 deferred.

Information concerning any aspect of this order may be obtained by contacting Jennifer Graves, Enforcement Coordinator at (956) 430-6023, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jim Hogg County, Docket No. 2011-0069-MSW-E on June 23, 2011 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kennard, Docket No. 2011-0079-MWD-E on June 23, 2011 assessing $6,450 in administrative penalties with $1,290 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHAI EXPRESS INC., Docket No. 2011-0081-PST-E on June 23, 2011 assessing $2,975 in administrative penalties with $595 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding General Dynamics Ordnance and Tactical Systems, Inc., Docket No. 2011-0092-AIR-E on June 23, 2011 assessing $2,925 in administrative penalties with $585 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Y & V Enterprises, L.L.C. dba I-30 Mini Mart, Docket No. 2011-0101-PST-E on June 23, 2011 assessing $1,295 in administrative penalties with $259 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saginaw Enterprises, LLC dba Saginaw Gas House, Docket No. 2011-0112-PST-E on June 23, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Kelly Wisian, Enforcement Coordinator at (512) 239-2570, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AKZO NOBEL SURFACE CHEMISTRY LLC, Docket No. 2011-0120-UIC-E on June 23, 2011 assessing $7,162 in administrative penalties with $1,432 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sufian Emmar dba Yager Food Store, Docket No. 2011-0125-PST-E on June 23, 2011 assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting JR Cao, Enforcement Coordinator at (512) 239-2543, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S Bayyoud Inc dba Lancaster Mart, Docket No. 2011-0130-PST-E on June 23, 2011 assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilgrim's Pride Corporation, Docket No. 2011-0139-PST-E on June 23, 2011 assessing $3,621 in administrative penalties with $724 deferred.

Information concerning any aspect of this order may be obtained by contacting Philip Aldridge, Enforcement Coordinator at (512) 239-0855, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OM NMO GLOBAL INC. dba MR 4 Food Mart, Docket No. 2011-0186-PST-E on June 23, 2011 assessing $2,629 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Park, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skidmore Water Supply Corporation, Docket No. 2011-0206-MWD-E on June 23, 2011 assessing $6,097 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lagoon Pumping and Dredging, Inc., Docket No. 2011-0240-WQ-E on June 23, 2011 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Thomas Jecha, P.G., Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding PTCAA Texas, L.P., Docket No. 2011-0383-PST-E on June 23, 2011 assessing $1,750 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding AIG Annuity Insurance Company, Docket No. 2011-0403-PST-E on June 23, 2011 assessing $875 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Johnny Mican, Docket No. 2011-0418-WOC-E on June 23, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Christopher D. Moss, Jr., Docket No. 2011-0419-WOC-E on June 23, 2011 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding U.S. Army Corps of Engineers, Docket No. 2011-0401-WQ-E on June 23, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Hurtado Construction Company, Docket No. 2011-0400-WQ-E on June 23, 2011 assessing $700 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Ross Ridge Sand Company, L.P., Docket No. 2011-0421-WR-E on June 23, 2011 assessing $350 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, Citation Coordinator at (512) 239-1769, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201102547
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Notice of Correction to Agreed Order Number 2

In the May 6, 2011, issue of the *Texas Register* (36 TexReg 3029), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically item Number 2. The reference to the Archdiocese of Galveston-Houston has been revised. The reference to a Supplemental Environmental Project being Texas Association of Resource Conservation and Development Areas, Incorporated, Water or Wastewater Treatment Assistance should instead be Bayou Land Conservancy *fka Legacy Land Trust*, Spring Creek Greenway Project.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201102527
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Notice of Correction to Agreed Order Number 6

In the May 20, 2011, issue of the*Texas Register* (36 TexReg 3205), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically item Number 6. The reference to Century Asphalt, Ltd. has been revised. The reference to a Supplemental Environmental Project being Texas Association of Resource Conservation and Development Areas, Incorporated, Clean School Buses should instead be Houston Galveston Air Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201102529
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Notice of Correction to Agreed Order Number 27

In the May 6, 2011, issue of the *Texas Register* (36 TexReg 3032), the Texas Commission on Environmental Quality (commission) published a notice of an Agreed Order Number, specifically item Number 27. The reference to the Dow Chemical Company has been revised. The reference to a Supplemental Environmental Project being Texas Association of Resource Conservation and Development Areas, Incor-

porated, Clean School Buses should instead be Houston Galveston Air Emission Reduction Credit Organization's Clean Cities/Clean Vehicles Program.

For questions concerning this error, please contact Debra Barber at (512) 239-0412.

TRD-201102528
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Notice of Water Quality Applications

The following notices were issued on June 17, 2011 through July 5, 2011.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

CITY OF GUNTER has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010569002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 1,800 feet east of the intersection of J C Maples Road and Farm-to-Market Road 121 in Grayson County, Texas 75058.

CHEMTRADE REFINERY SERVICES INC which operates an organic chemicals plant, has applied for a renewal of TPDES Permit No. WQ0000647000, which authorizes the discharge of storm water, fire fighting equipment test water, eyewash and safety shower water, and other allowable non-storm water discharges on an intermittent and variable basis. The facility is located at 1400 Olin Road, approximately 2,000 feet east of State Highway 380 and approximately 2.7 miles south of the intersection of State Highway 380 and State Highway 90, on the south side of the City of Beaumont, Jefferson County, Texas, 77042.

SOUTHWESTERN ELECTRIC POWER COMPANY which operates Henry W. Pirkey Power Plant, has applied for a major amendment to TPDES Permit No. WQ0002496000 to authorize: (a) an increase in the capacity of the existing Flue Gas Desulphurization (FGD) & Fly Ash Landfill Retention Pond, (b) the diversion of wastewater from the Ash Pond into the FGD & Fly Ash Landfill Retention Pond on an infrequent basis, (c) a reduction in the monitoring frequency for total suspended solids at Outfalls 004 and 005 from once per month to once per quarter, (c) a reduction in the monitoring frequency for oil and grease at Outfall 006 from once per month to once per quarter, (d) a reduction in the monitoring frequency for oil and grease at Outfall 102 from once per quarter to once per year, (e) a reduction in monitoring frequency for biochemical oxygen demand (5-day) at Outfall 302 from once per two months to once per quarter, and (f) a temporary reduction in two-foot freeboard requirement for ponds during storm events. The current permit authorizes the discharge of once-through cooling water and previously monitored effluent (low volume wastewater on an intermittent and flow variable basis via Outfall 102; treated effluent from Plant "X" at a daily average flow not to exceed 800,000 gallons per day via Outfall 202; and domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via Outfall 302) at a daily average flow not to exceed 600,000,000 gallons per day via Outfall 002; storm water from the Lignite Runoff Pond on an intermittent and flow variable via Outfall 003; storm water from the FGD & Fly Ash Landfill Retention Pond on an intermittent and flow variable via Outfall 004; storm water from the Limestone Runoff Pond on an intermittent and flow variable via Outfall 005; and wastewater from the Ash Pond on an intermittent and flow variable basis via Outfall 006. The facility is located adjacent to Red Oak Road at a point approximately six miles southeast of the City of Hallsville, Harrison County, Texas 75650.

GULF COAST WASTE DISPOSAL AUTHORITY which operates the Odessa South Regional WWTP, a publically owned treatment works (POTW) that treats industrial and municipal wastewater, has applied for a major amendment to TPDES Permit No. WQ0003776000 to increase the daily average permitted flow to 10,600,000 gallons per day and the daily maximum permitted flow to 12,000,000 gallons per day; authorize the reuse of effluent; increase the effluent limitations for dechlorination by-products (chloroform, dibromochloromethane, bromodichloromethane, and bromoform) at Outfall 001; remove the metal cleaning waste pretreatment requirements regarding the Steam Electric Pretreatment Categorical Standard; remove non-applicable permit language; specify a minimum analytical level value for total residual chlorine; authorize the use of a membrane treatment process for reclaimed water; authorize the transfer of reclaimed water off-site; and confirm sludge reporting requirements. The current permit authorizes the discharge of treated process wastewater, municipal and domestic wastewater, utility wastewater, and storm water at a daily average flow not to exceed 5,600,000 gallons per day via Outfall 001. The facility is located approximately one mile south of the intersection of Interstate Highway 20 and Grandview Avenue, south of the City of Odessa, Ector County, Texas 79766.

COTTONWOOD ENERGY COMPANY LP which operates the Cottonwood Energy Project, a natural gas-fired, combined cycle electric power generating facility, has applied for a renewal of TPDES Permit No. WQ0004230000, which authorizes the discharge of treated low volume wastewater, cooling tower blowdown, and previously monitored effluent (treated domestic wastewater) at a daily average flow not to exceed 2,250,000 gallons per day via Outfall 001. The facility is located southwest of the City of Ruliff, west of Indian Lake Road, approximately 0.75 miles south of the intersection of Indian Lake Road and Hartburg Road, Newton County, Texas 77614.

TPC GROUP LLC which operates a facility that manufactures butadiene from crude streams used in the production of rubber, has applied for a renewal of TPDES Permit No. WQ0004840000, which authorizes to treat and discharge predominently storm water on an intermittent and variable basis, hydrostatic test water, and authorized non-storm water from the Port Neches Operations Facility. The facility is located at at at the northwest corner of the intersection of FM 366 and Spur 136, Jefferson County, Texas, 77651.

CITY OF DE LEON has applied for a major amendment to TPDES Permit No. WQ0010078001 to authorize construction of a new mechanical treatment system replacing the existing Imhoff tank/pond treatment system. The proposed facility will be located approximately 500 feet west of the existing facility. The permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 295,000 gallons per day. The existing facility is located approximately 1,000 feet south of State Highway 6 and 4,000 feet east of State Highway 16, east of the City of De Leon in Comanche County, Texas 76444. The proposed facility will be located approximately 1,000 feet south of State Highway 6 and 3,500 feet east of State Highway 16, east of the City of De Leon in Comanche County, Texas 76444.

CITY OF MUNDAY has applied for a major amendment to TPDES Permit No. WQ0010228002 to authorize the land application of treated effluent for beneficial use on 113 acres. The current permit autho-

rizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located immediately south of Farm-to-Market Road 1587, approximately 2.3 miles northwest of the intersection of Farm-to-Market Road 1587 and Farm-to-Market Road 266 in Knox County, Texas 76371. The disposal site will be located to the south of and adjacent to the wastewater treatment facility.

CITY OF WOODVILLE has applied for a renewal of TPDES Permit No. WQ0010322001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located at 320 Veterans Way, approximately 1,000 feet east of U.S. Highway 69 and 3,000 feet south of U.S. Highway 190, in Woodville in Tyler County, Texas 75979

PHW EMW AWB AND EB TEXAS LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014970001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility will be located at 5566 Mitchell Saxon Road, approximately 0.5 mile east of the intersection of Banks Road and Mitchell Saxon Road, approximately 90 feet south of Mitchell Saxon Road in Tarrant County, Texas 76140.

CAPE ROYALE UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0010997001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located at 70 Pebble Beach Circle, approximately 5.5 miles north of the City of Coldspring in the northwest corner of the Cape Royale Subdivision, on the shore of Lake Livingston in San Jacinto County, Texas 77331.

CITY OF KENNARD has applied for a renewal of TPDES Permit No. WQ0011474001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day. The facility is located on the southeast side of Kennard on a 27 acre tract, on Elm Creek between Pine Prairie Road and Farm-to-Market Road 357 in Houston County, Texas 75847.

NORTH ORANGE WATER AND SEWER LLC has applied for a renewal of TPDES Permit No. WQ0011589001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 153,000 gallons per day. The facility is located immediately west of State Highway 87, approximately 4.5 miles north of the intersection of State Highway 87 and Interstate Highway 10 and approximately 6.9 miles north of the business district of the City of Orange in Orange County, Texas 77632.

CHIRENO INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013917001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located on the north side of Farm-to-Market Road 95, approximately 0.5 mile south of the junction of Highway 21 and Farm-to-Market Road 95 in Nacogdoches County, Texas 75937.

YOUNG MEN'S CHRISTIAN ASSOCIATION OF METROPOLITAN DALLAS has applied for a renewal of TPDES Permit No. WQ0014486001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 32,000 gallons per day. The facility is located at 1525 Farm-to-Market Road 3133, approximately 3,400 feet northeast of the intersection of Farm-to-Market Road 2862 and County Road 511, in Anna, in Collin County, Texas 75409.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO 99 has applied to the for a renewal of TPDES Permit No. WQ0014604001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located at 2907 Woodland Glen Lane, approximately 2,000 feet east of the centerline of Aldine Westfield Road and approximately 1,700 feet north of the intersection of Fountain Brook Park Lane and Trinity Park Lane in Conroe, Montgomery County, Texas 77385.

BENBROOK TEXAS LIMITED PARTNERSHIP has applied for a renewal of TPDES Permit No. WQ0014792001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located at 5130 Ben Day Murrin Road, Lot 841, Fort Worth, in Tarrant County, Texas 76126.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201102545
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Revised Notice of Receipt of Application and Intent to Obtain a Municipal Solid Waste Permit (Proposed) Permit No. 2376

APPLICATION. CCAA, LLC, P.O. Box 5449, Bryan, Brazos County, Texas 77805, a Municipal Solid Waste (MSW) Management Company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the Brazos County Disposal Facility 42.24-acre property as a Type IV MSW Disposal Facility. The facility is at 8825 Stewarts Meadow, College Station, Brazos County, Texas 77845. The TCEQ received the application on June 3, 2011. The permit application is available for viewing and copying at the Bryan + College Station Public Library System, Larry J. Ringer Public Library, 1818 Harvey Mitchell Parkway South, College Station, Brazos County, Texas 77845-4297.

ADDITIONAL NOTICE. TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments

are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose. Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at www.tceq.state.tx.us/about/comments.html. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained from CCAA, LLC at the address stated above or by calling Mr. Charles Mancuso, Operating Manager/President, at (979) 260-0006.

TRD-201102546
Melissa Chao
Acting Chief Clerk
Texas Commission on Environmental Quality
Filed: July 6, 2011

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## Texas Facilities Commission

Request for Proposals #303-2-20288

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS) Driver License Office, announces the issuance of Request for Proposals (RFP) #303-2-20288. TFC seeks a 5 (five) or ten (ten) year lease of approximately 23,840 square feet of office space in Austin, Travis County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95498.*

TRD-201102514
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 1, 2011

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Request for Proposals #303-2-20289

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-2-20289. TFC seeks a five (5) or ten (10) year lease of approximately 23,840 square feet of office space in Northwest Harris County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95516.*

TRD-201102521
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 5, 2011

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Request for Proposals #303-2-20290

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS) Driver License Office, announces the issuance of Request for Proposals (RFP) #303-2-20290. TFC seeks a 5 (five) or 10 (ten) year lease of approximately 23,840 square feet of office space in Northwest San Antonio, Bexar County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease

on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95509.*

TRD-201102515
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 1, 2011

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### Request for Proposals #303-2-20291

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS) Driver License Office, announces the issuance of Request for Proposals (RFP) #303-2-20291. TFC seeks a 5 (five) or ten (ten) year lease of approximately 23,840 square feet of office space in Northwest Dallas, Dallas County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95522.*

TRD-201102517
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 1, 2011

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### Request for Proposals #303-2-20292

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-2-20292. TFC seeks a five (5) or ten (10) year lease of approximately 23,840 square feet of office space in Northeast Harris County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95518.*

TRD-201102522
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 5, 2011

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### Request for Proposals #303-2-20293

The Texas Facilities Commission (TFC), on behalf of the Department of Public Safety (DPS), announces the issuance of Request for Proposals (RFP) #303-2-20293. TFC seeks a five (5) or ten (10) year lease of approximately 23,840 square feet of office space in Southeast Harris County, Texas.

The deadline for questions is July 26, 2011 and the deadline for proposals is August 9, 2011 at 3:00 p.m. The award date is October 19, 2011. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=95519.*

TRD-201102523
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 5, 2011

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## Texas Forest Service

### Notice of Extension of Agreement

In accordance with the provisions of Texas Government Code, Chapter 2254, the Texas Forest Service has extended a major consulting contract for an enterprise GIS Implementation plan and system design. The consultant will provide a formal planning process to develop an implementation plan and system design that can be integrated through an entire organization so that a large number of users can manage and share spatial data information.

The name and address of consultant is as follows: Data Transfer Solutions, Inc., 3680 Avalon Park Blvd, Suite 200, Orlando, Florida 32828.

The Texas Forest Service will pay an amount of $147,000.00. The contract extension will begin on June 15, 2011 and shall terminate on September 15, 2011.

If any, the consultant will submit documents, films, recordings, or reports compiled by the consultant under the contract to the Texas Forest Service, no later than three months after completion of services.

Any questions regarding this posting should be directed to: Alan Degelman, Purchasing Department Head/HUB Coordinator, Purchasing Department, John B. Connally Bldg, 301 Tarrow Street, Suite 419, College Station, Texas 77840.

TRD-201102496

Donna Harrell
Buyer, Texas A&M University System
Texas Forest Service
Filed: June 30, 2011

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## Department of State Health Services

Licensing Actions for Radioactive Materials

LICENSING ACTIONS FOR RADIOACTIVE MATERIALS

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Dallas | Triad Isotopes, Inc. | L06334 | Dallas | 00 | 06/10/11 |
| Throughout TX | CMT Engineering, Inc. | L06407 | Lubbock | 00 | 06/21/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Andrews | Andrews County Hospital District dba Permian Regional Medical Center | L03158 | Andrews | 26 | 06/28/11 |
| Arlington | D. Harris Consulting | L04845 | Arlington | 10 | 06/29/11 |
| Arlington | Janik Enterprises, Inc. | L03319 | Arlington | 14 | 06/28/11 |
| Austin | Heart of Texas Cardiology, P.A. | L05622 | Austin | 07 | 06/22/11 |
| Corpus Christi | Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial | L00265 | Corpus Christi | 93 | 06/20/11 |
| Corpus Christi | Radiology & Imaging of South Texas, L.L.P. dba Alameda Imaging Center | L05182 | Corpus Christi | 30 | 06/24/11 |
| Corpus Christi | Valero Refining-Texas L.P. dba Valero Bill Greehey Refinery | L03360 | Corpus Christi | 30 | 06/22/11 |
| Dallas | Medical City Dallas Hospital dba Medical City | L01976 | Dallas | 187 | 06/20/11 |
| Dallas | Medi Physics, Inc. dba G. E. Healthcare | L05529 | Dallas | 31 | 06/17/11 |
| Dallas | IBA Molecular North America, Inc. dba IBA Molecular | L06174 | Dallas | 09 | 06/28/11 |
| Dallas | Physician Reliance Network dba Texas Cancer Center at Medical City Dallas | L05534 | Dallas | 12 | 06/24/11 |
| Dallas | Texas Health Presbyterian Hospital Dallas | L04288 | Dallas | 30 | 06/24/11 |
| Denton | Texas Oncology, P.A. dba Texas Cancer Center Denton | L05815 | Denton | 11 | 06/13/11 |
| El Paso | Edward R. Assi, D.O., P.A. | L05695 | El Paso | 07 | 06/14/11 |
| El Paso | Texas Oncology, P.A. dba El Paso Cancer Treatment Center | L05771 | El Paso | 10 | 06/24/11 |
| El Paso | Southwest X-Ray, L.P. | L05207 | El Paso | 12 | 06/30/11 |
| Fort Worth | TSIT | L05697 | Fort Worth | 07 | 06/23/11 |
| Fort Worth | Fort Worth Heart, P.A. | L05480 | Fort Worth | 37 | 06/21/11 |
| Fort Worth | University of North Texas Health Science Center Fort Worth | L02518 | Fort Worth | 40 | 05/12/11 |
| Greenville | Hunt Memorial Hospital District dba Hunt Regional Medical Center | L01695 | Greenville | 43 | 06/17/11 |
| Houston | Methodist Health Centers dba Methodist Willowbrook Hospital | L05472 | Houston | 40 | 06/21/11 |
| Houston | The University of Texas M.D. Anderson Cancer Center | L00466 | Houston | 130 | 06/21/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

| | | | | | |
|---|---|---|---|---|---|
| Houston | NIS Holdings, Inc.<br>dba Nuclear Imaging Services | L05775 | Houston | 74 | 06/24/11 |
| Houston | Memorial City Cardiology Associates<br>dba Katy Cardiology Associates | L05713 | Houston | 15 | 06/22/11 |
| Kerrville | Kerrville Cardiovascular Center, Ltd. | L05334 | Kerrville | 07 | 06/17/11 |
| Killeen | George S. Rebecca, M.D., FACC<br>dba Texas Cardiovascular Medicine | L05099 | Killeen | 12 | 06/29/11 |
| Lamesa | Dawson County Hospital District<br>dba Medical Arts Hospital | L06244 | Lamesa | 07 | 06/24/11 |
| Longview | Eastman Chemical Company | L00301 | Longview | 115 | 06/21/11 |
| Mesquite | Texas Oncology, P.A.<br>dba Texas Cancer Center Mesquite | L05741 | Mesquite | 10 | 06/21/11 |
| Mexia | Parkview Regional Hospital | L05144 | Mexia | 26 | 06/29/11 |
| Paris | Heart Clinic of Paris, P.A. | L06013 | Paris | 03 | 06/27/11 |
| Pasadena | Marathon Pipe Line, L.L.C. | L05303 | Pasadena | 11 | 06/23/11 |
| Pasadena | Oxy Vinyls, L.P. | L02257 | Pasadena | 25 | 06/28/11 |
| Pasadena | PMC Hospital, L.L.C.<br>dba St. Luke's Patients Medical Center | L06384 | Pasadena | 01 | 06/27/11 |
| Plano | Physican Reliance Network, Inc.<br>dba Texas Oncology Plano West Cancer Center | L05896 | Plano | 18 | 06/14/11 |
| Plano | Texas Health Presbyterian Hospital Plano | L04467 | Plano | 61 | 06/08/11 |
| Plano | Plano Heart Center, P.A. | L05673 | Plano | 05 | 06/22/11 |
| Port Arthur | S. K. Rao, M.D., P.A. | L05415 | Port Arthur | 18 | 06/15/11 |
| Round Rock | Texas Oncology, P.A. | L06240 | Round Rock | 01 | 06/24/11 |
| San Angelo | San Angelo Hospital, L.P.<br>dba San Angelo Community Medical Center | L02487 | San Angelo | 48 | 06/21/11 |
| San Angelo | Miltiadis Leon, M.D. | L06102 | San Angelo | 03 | 06/29/11 |
| San Antonio | Methodist Healthcare System of<br>San Antonio Ltd., L.L.P. | L00594 | San Antonio | 289 | 06/17/11 |
| San Antonio | VHS San Antonio Partners, L.L.C<br>dba Baptist Health System | L00455 | San Antonio | 207 | 06/16/11 |
| San Antonio | VHS San Antonio Partners, L.L.C.<br>dba Baptist Health System | L00455 | San Antonio | 208 | 06/17/11 |
| San Antonio | South Texas Oncology and Hematology, P.A.<br>dba Start Center for Cancer Care | L06300 | San Antonio | 01 | 06/23/11 |
| San Antonio | Christus Santa Rosa Health Care | L02237 | San Antonio | 129 | 06/24/11 |
| San Antonio | The University of Texas Health Science Center<br>at San Antonio | L01279 | San Antonio | 129 | 06/22/11 |
| San Antonio | The University of Texas Health Science Center<br>at San Antonio | L01279 | San Antonio | 130 | 06/29/11 |
| San Antonio | South Texas Radiology Imaging Centers | L00325 | San Antonio | 197 | 06/30/11 |
| Seguin | Guadalupe Regional Medical Center | L02292 | Seguin | 39 | 06/22/11 |
| Stafford | Aloki Enterprise, Inc. | L06257 | Stafford | 14 | 06/09/11 |
| Stafford | Aloki Enterprise, Inc. | L06257 | Stafford | 15 | 06/22/11 |
| Sugar Land | Methodist Sugar Land Hospital | L05788 | Sugar Land | 31 | 06/14/11 |
| Sugar Land | St. Luke's Sugar Land Partnership, L.L.P.<br>dba St. Luke's Sugar Land Hospital | L06180 | Sugar Land | 08 | 05/27/11 |
| Sugar Land | US Imaging, Inc.<br>dba Fort Bend Imaging | L04459 | Sugar Land | 38 | 06/28/11 |
| Sweeny | ConocoPhillips Company | L00337 | Sweeny | 55 | 06/23/11 |
| Tatum | Luminant Mining Company, L.L.C. | L06081 | Tatum | 09 | 06/20/11 |
| The Woodlands | Memorial Hermann Hospital System<br>dba Memorial Hermann Hospital The<br>Woodlands | L03772 | The Woodlands | 85 | 06/29/11 |
| Throughout TX | Texas Department of State Health Services | L05865 | Austin | 07 | 06/22/11 |

AMENDMENTS TO EXISTING LICENSES ISSUED: (continued)

| | | | | | |
|---|---|---|---|---|---|
| Throughout TX | Texas Department of Transportation | L00197 | Austin | 156 | 06/28/11 |
| Throughout TX | Lind & Associates, Inc.<br>dba T & N Laboratories & Engineering | L04417 | Beaumont | 16 | 06/28/11 |
| Throughout TX | Wildcat Wireline, L.L.C. | L06199 | Benbrook | 02 | 06/20/11 |
| Throughout TX | IESCO, L.L.C. | L06351 | Corpus Christi | 02 | 06/20/11 |
| Throughout TX | Berry Fabricators | L01575 | Corpus Christi | 57 | 06/23/11 |
| Throughout TX | National Inspection Services, L.L.C. | L05930 | Crowley | 31 | 06/29/11 |
| Throughout TX | Syntec Engineering Group, Inc. | L05978 | Dallas | 02 | 06/21/11 |
| Throughout TX | H & H X-Ray Services, Inc. | L02516 | Flint | 86 | 06/20/11 |
| Throughout TX | Cardinal Health | L05536 | Houston | 29 | 06/20/11 |
| Throughout TX | Statewide Maintenance Company<br>dba Diamond G Inspection, Inc. | L06229 | Houston | 04 | 06/20/11 |
| Throughout TX | Monitoring Services | L04501 | Houston | 13 | 06/20/11 |
| Throughout TX | Geotest Engineering, Inc. | L02735 | Houston | 47 | 06/16/11 |
| Throughout TX | Cav-Tech, Inc. | L05996 | Houston | 02 | 06/22/11 |
| Throughout TX | Enviroklean Product Development, Inc. | L06350 | Houston | 01 | 06/22/11 |
| Throughout TX | Services and Compliance Consultants, Inc. | L03873 | Huntsville | 22 | 06/29/11 |
| Throughout TX | Marco Inspection Services, L.L.C. | L06072 | Kilgore | 36 | 06/28/11 |
| Throughout TX | RNLS, L.L.C. | L06307 | Levelland | 06 | 06/22/11 |
| Throughout TX | Quantum Technical Services, L.L.C. | L06406 | Pasadena | 01 | 06/29/11 |
| Throughout TX | Pioneer Wireline Services, L.L.C. | L06220 | Rosharon | 11 | 06/29/11 |
| Throughout TX | Schlumberger Technology Corporation | L00754 | Sugar Land | 121 | 06/16/11 |
| Throughout TX | Schlumberger Technology Corporation | L01833 | Sugar Land | 165 | 06/20/11 |
| Tyler | East Texas Medical Center | L00977 | Tyler | 150 | 06/20/11 |
| Tyler | Mother Frances Hospital Regional Health Care Center | L01670 | Tyler | 168 | 06/21/11 |
| Winnsboro | Mother Frances Hospital - Winnsboro | L03336 | Winnsboro | 31 | 06/21/11 |

RENEWAL OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Throughout TX | Panhandle Perforators, Inc. | L03065 | Pampa | 13 | 06/21/11 |

TERMINATIONS OF LICENSES ISSUED:

| Location | Name | License # | City | Amend-ment # | Date of Action |
|---|---|---|---|---|---|
| Dallas | Mallinckrodt, Inc. | L03580 | Dallas | 73 | 06/10/11 |
| Electra | Electra Hospital District<br>dba Electra Memorial Hospital | L03227 | Electra | 16 | 06/21/11 |
| Houston | Surgical Care Affiliates | L05164 | Houston | 07 | 06/24/11 |

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201102537
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: July 6, 2011

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## Texas Department of Housing and Community Affairs

Request for Proposals for Bond Counsel

**SUMMARY.** The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside Bond Counsel. Bond Counsel will provide legal services in connection with the issuance of TDHCA's bonds, notes, and other obligations of TDHCA to finance or refinance residential housing and multifamily housing developments and to refund prior bond issues.

**DEADLINE FOR SUBMISSION.** The deadline for submission in response to the request for proposals is **4:00 p.m., Central Daylight Saving Time, on the 15th day of August 2011.** No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Jeffrey T. Pender, Acting General Counsel, at (512) 475-4752, jeff.pender@tdhca.state.tx.us, 211 East 11th Street, Austin, Texas 78701 or P.O. Box 13941, Austin, Texas 78711, or visit the "Featured Items" section of our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Pender or his assistant concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-201102550
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: July 6, 2011

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Request for Proposals for Tax Credit Counsel

**SUMMARY.** The Texas Department of Housing and Community Affairs (TDHCA), through its Legal Services Division, is issuing a Request for Proposals (RFP) for outside counsel in connection with TDHCA's administration of its low income housing tax credit matters.

**DEADLINE FOR SUBMISSION.** The deadline for submission in response to the Request for Proposals is **4:00 p.m., Central Daylight Saving Time on the 15th day of August.** No proposal received after the deadline will be considered.

TDHCA reserves the right to accept or reject any (or all) proposals submitted. The information contained in this proposal request is intended to serve only as a general description of the services desired by TDHCA, and TDHCA intends to use responses as a basis for further negotiation of specific project details with offerors. This request does not commit TDHCA to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this request for proposals in no way obligates TDHCA to award a contract or to pay any costs incurred in the preparation of a response.

Law firms interested in submitting a proposal should contact Mr. Jeffrey T. Pender, Acting General Counsel, at (512) 475-4752, jeff.pender@tdhca.state.tx.us, 211 East 11th Street, Austin, Texas 78701 or P.O. Box 13941, Austin, Texas 78711, or visit the "Featured Items" section of our website at www.tdhca.state.tx.us, for a complete copy of the RFP. Communication with any member of the board, the executive director, or TDHCA staff other than Mr. Pender or his assistant, concerning any matter related to this request for proposals is grounds for immediate disqualification.

TRD-201102549
Timothy K. Irvine
Acting Director
Texas Department of Housing and Community Affairs
Filed: July 6, 2011

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## Texas Department of Insurance

Company Licensing

Application to change the name of UNICARE HEALTH INSURANCE COMPANY OF TEXAS to MHEALTH INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Houston, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-201102536
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 6, 2011

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of BEACON HEALTH STRATEGIES, LLC, a foreign third party administrator. The home office is WOBURN, MASSACHUSETTS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of David Moskowitz, MC 305-2E, 333 Guadalupe, Austin, Texas 78701.

TRD-201102543
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 6, 2011

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## Texas Lottery Commission

Notice of Public Comment Hearing

A public hearing to receive public comments regarding the proposed procedure, Lotto Texas Jackpot Estimation Procedure, OC-JE-002, will be held on Wednesday, September 7, 2011, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

# TEXAS LOTTERY COMMISSION

## OFFICE OF THE CONTROLLER

## PROCEDURE

| Number: OC-JE-002 Page: 1 of 5 | Title: *Lotto Texas*® Jackpot Estimation | Approval: Texas Lottery Commission |
|---|---|---|
| Effective Date: | Approval Date: | Review Date: |

**PROCEDURE NUMBER**
OC-JE-002 [Supersedes OC-JE-002 effective October 2, 2009]

**PURPOSE**
To provide policy guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

**SCOPE**
This procedure applies to staff of the Texas Lottery Commission.

**RESPONSIBILITY**
The final approval for the estimated annuitized jackpot amount to advertise will be provided by the Texas Lottery Commission Executive Director.

**GENERAL**
The Texas Lottery Commission (TLC) ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is utilized in preparation of the jackpot estimation. The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot amount to advertise for *Lotto Texas* Drawings.

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The Lotto Texas Game rule states, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the sales proceeds, paid in 25 annual installments; or the amount advertised in accordance with subsection (e) of the Lotto Texas On-Line Game Rule as the estimated jackpot for the drawing, paid in 25 annual installments."

A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in 25 annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections.

**PROCEDURE**

**I. Timeline**

1. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
2. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
3. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

**II. Compile Estimate Information:**

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company prior to each estimation. Commission staff requests the estimated cost of 25 annual payments to yield the advertised jackpot. The interest factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a 25-year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.

2. Compile actual *Lotto Texas* draw sales for the current drawing.

**III. Estimate the *Sales and Jackpot* Support for the Current and Future Draws:**

Commission staff will estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved.

1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if Commission staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.

   a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings.

   b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:

      - Wednesday draw sales are generally lower than Saturday draw sales.
      - length of time since a large jackpot was advertised
      - effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
      - weather throughout the state, especially in key markets
      - sales trends for like jackpots and/or most recent roll cycles
      - current advertising/promotions schedule
      - relevant media issues
      - on-line terminal connection problems
      - jackpots advertised for games such as Mega Millions and Powerball
      - new on-line game launches or other game enhancements
      - overall trends in sales over similar time periods
      - other - IRS deadlines, spring break, strength of the economy, etc.

      It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.

   a) If sales proceeds are not sufficient to pay a jackpot prize, the TLC shall use funds from the State Lottery Account as identified in Government Code, Section 466.355.

   b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.

3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.

4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.

   a) The estimated annuitized jackpot prize amount will automatically be set to four million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.

   b) The range of projected estimated annuitized jackpot amounts to advertise in the event of a rollover should reflect at least one million dollars greater than the current advertised jackpot.

## IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:

1. The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the "low end" sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the "high end" sales support.

2. The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that "low end" sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in $1 million increments.

3. The recommended jackpot amount to advertise is presented to the Executive Director for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw.

## V. Distribution of Estimated Jackpot Information on the Agency Website:

1. The Commission staff will perform the following:

   a) After the Executive Director has approved an advertised estimated jackpot under subsection (e) of the Lotto Texas On-Line Game Rule, Commission staff will post to the agency website the amount of ticket sales, if any, for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing,

investment information used to determine the advertised estimated jackpot, and other information used to determine the advertised estimated jackpot.

b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be posted to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be posted to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for four million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

**VI. Distribution of information when the current advertised jackpot prize amount is changed:**

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Commission personnel will communicate the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise to all pertinent TLC and vendor staff. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-201102500
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 1, 2011

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## Public Utility Commission of Texas

### Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 1, 2011, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Network USA, LLC for a Service Provider Certificate of Operating Authority, Docket Number 39554.

Applicant intends to provide facilities-based and resold telecommunications services.

Applicant's requested SPCOA geographic area comprises the geographic areas of the exchanges currently served by AT&T Texas, Verizon Southwest, and Windstream.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than July 22, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39554.

TRD-201102540
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2011

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## Notice of Application for Limited Waiver of Code of Conduct

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 30, 2011 for limited waiver with respect to its code of conduct.

Docket Style and Number: Application of Lone Star Transmission, LLC for a Limited Waiver with Respect to its Code of Conduct, Docket Number 39551.

The Application: On June 30, 2011, Lone Star Transmission, LLC (Lone Star), a transmission service provider filed an application requesting a limited waiver to its code of conduct to allow Florida Power & Light Company's (FPL) Transmission and Substation operations group (TS Group) to perform technical, field, and maintenance support services for Lone Star.

Lone Star plans to utilize FPL's TS Group for a number of support services once the transmission lines are energized, including support for system operations, transmission services and planning, and technical, field, and maintenance services. Other services that Lone Star would look to the TS Group to provide include (1) technology, (2) compliance, (3) business services, and (4) safety, environmental, and training.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 39551.

TRD-201102539
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2011

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## Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on June 30, 2011, to amend a certificate of convenience and necessity for a proposed transmission line in Guadalupe County, Texas.

Docket Style and Number: Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Cushman to Highway 123 138-kV Transmission Line in Guadalupe County. Docket Number 39479.

The Application: The application of LCRA Transmission Services Corporation (LCRA TSC) is designated as the Cushman to Highway 123 138-kV Transmission Line Project. The proposed project is presented with 16 alternate routes. LCRA TSC has designated Route 16 as the primary alternative route. Any route presented in the application could, however, be approved by the commission. Depending on the route chosen, the proposed line will be 6 to 9 miles in length. The total estimated cost for the project ranges from approximately $19 million to $25 million depending upon the final route chosen.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is August 15, 2011. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) (800) 735-2989. All comments should reference Docket Number 39479.

TRD-201102516
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 2011

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## Notice of Corporate Reorganization and If Required, Request for Regulatory Approvals

Notice is given to the public of a notice of a proposed corporate reorganization and, if required, request for regulatory approvals filed with the Public Utility Commission of Texas on June 30, 2011, pursuant to the Public Utility Regulatory Act, Texas Utility Code Annotated, §§14.101, 39.262, and 39.915 (Vernon 2007 & Supp. 2010) (PURA).

Docket Style and Number: Lone Star Transmission, LLC's Notice of Corporate Reorganization and if Required, Request for Regulatory Approvals, Docket Number 39545.

The Application: Lone Star Transmission, LLC (Lone Star) filed notification of a proposed corporate reorganization that will transfer controlling interest in Lone Star to one of two newly created holding companies within the existing NextEra Energy, Inc. (NextEra) family of companies, but will not change the ultimate upstream ownership of Lone Star and will not involve the reorganization of Lone Star itself.

Specifically, Lone Star seeks regulatory approval to transfer 100% of U.S. Transmission's (currently the direct parent of Lone Star) controlling interest in Lone Star to Lone Star Transmission Capital, LLC (Lone Star Transmission Capital), a newly formed holding company that is organizationally situated between Lone Star and U.S. Transmission. One additional holding company, Lone Star Transmission Holdings, LLC (Lone Star Transmission Holdings), will also be created and will be organizationally situated between Lone Star Transmission Capital and U.S. Transmission, but its interest in Lone Star will be indirect. As a result, Lone Star's proposed realignment will enhance its ability to access a broader spectrum of capital funding sources and greater financial flexibility.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 39545.

TRD-201102538
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2011

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## Notice of Joint Agreement of Southwest Texas Telephone Company and Petitioning Exchanges to Provide Extended Area Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a joint agreement on June 23, 2011, seeking approval of two-way, mandatory, Extended Area Service (EAS), between Southwest Texas Telephone Company (SWT) and the exchanges

of Barksdale, Camp Wood, D'Hanis, Rocksprings, Vinegarroon and Utopia (Petitioning Exchanges).

Project Title and Number: Joint Application of Southwest Texas Telephone Company and Petitioning Exchanges for Two-Way Expanded Area Service Pursuant to P.U.C. Subst. R. §26.217; Docket Number 39531 before the Public Utility Commission of Texas.

The agreement will allow SWT customers within the Petitioning Exchanges to call other SWT customers within the Petitioning Exchanges without incurring any long distance charges. Petitioners are proposing a mandatory (non-optional) expanded area service calling plan for all SWT customers within the Petitioning Exchanges and are not proposing any additional rate additives for any customer class or any grade of service. In addition, the Petitioners have requested that the commission grant a good cause waiver of the contiguous boundary requirement. The Petitioners have proposed an effective date of October 1, 2011.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 39531.

TRD-201102544
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2011

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## Revised Public Notice of Open Meeting/Workshop Concerning Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area

The Public Utility Commission of Texas (commission) will hold a workshop regarding the project to evaluate the direct assignment of costs for wholesale classes in the Oncor service area on Wednesday, August 3, 2011 from 9:00 a.m. to 4:00 p.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 38808, *Project to Evaluate the Direct Assignment of Costs for Wholesale Classes in the Oncor Service Area* has been established for this proceeding.

The commission requests that interested persons file comments to the following questions on or before July 20, 2011:

1. How should the direct assignment of distribution costs be defined?

A. Define direct assignment in the context of cost causation.

B. Define direct assignment for distribution service customer classes.

C. Identify and explain any cost methodologies for different customer usage characteristics that could be affected by any of the following:

i. Load-based system average vs. location of facilities;

ii. Retail vs. wholesale customers;

iii. Individual, aggregate, class; and

iv. Historical vs. current vs. future.

D. Identify and explain any cost methodologies for different facilities that could be affected by any of the following:

i. Shared facilities among customers;

a. Inter-class; and

b. Intra-class.

ii. Radial lines;

a. One customer; and

b. More than one customer.

iii. Differences in facilities to serve customers.

E. Identify and explain any direct assignment cost methodology precedents in Texas, and outside of Texas.

F. Identify and explain any rate impacts of different cost methodologies based on how the direct assignment of distribution costs is defined.

2. Would the direct assignment of distribution costs have competitive market implications for wholesale customers in the context of the following:

A. System average costs vs. "direct assignment" costs;

B. Subsidization of classes:

i. Subsidization defined;

ii. Effects;

C. Effect on Facilities Extension Agreements; and

D. Stranded costs for customers who leave the system.

3. What are the cost of service and rate implications of the direct assignment of distribution costs in the context of the following:

A. Effects on the allocation of O&M and A&G Costs, taxes, and other income;

B. Frequency of rate updates when facilities are replaced; and

C. Rate effects from Storm Catastrophe

4. Would the direct assignment of costs conflict with any provisions in PURA, Commission precedent, or the commission's Substantive Rules?

These questions address whether the direct assignment of costs for wholesale customers costs is appropriate. Depending on the resolution of these questions, the project may move into a second phase, which would address the actual implementation of the direct assignment of costs.

Responses may **be filed** by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 **on or before July 20, 2011.** All responses should reference Project Number 38808.

Ten days prior to the workshop the commission shall make available in Central Records under Project Number 38808 an agenda for the format of the workshop.

Questions concerning the workshop or this notice should be referred to Richard Lain, Director of Tariff and Rate Analysis, Rate Regulation Division, at (512) 936-7454. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201102472
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 2011

## How to Use the Texas Register

**Information Available**: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

**Attorney General** - summaries of requests for opinions, opinions, and open records decisions.

**Secretary of State** - opinions based on the election laws.

**Texas Ethics Commission** - summaries of requests for opinions and opinions.

**Emergency Rules**- sections adopted by state agencies on an emergency basis.

**Proposed Rules** - sections proposed for adoption.

**Withdrawn Rules** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

**Adopted Rules** - sections adopted following public comment period.

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

**Tables and Graphics** - graphic material from the proposed, emergency and adopted sections.

**Transferred Rules**- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

**In Addition** - miscellaneous information required to be published by statute or provided as a public service.

**Review of Agency Rules** - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

**How to Cite**: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

**How to Research**: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

## Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

**How to Cite**: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

**How to update**: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

**TITLE 1. ADMINISTRATION**
***Part 4. Office of the Secretary of State***
**Chapter 91. Texas Register**
40 TAC §3.704.....950 *(P)*